CLERK'S COPY.

1 1 2 276 [illegible]

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 73

POSTAL STEAMSHIP CORPORATION, PETITIONER,

vs.

STEAMSHIP EL ISLEO, ETC., SOUTHERN PACIFIC COMPANY, CLAIMANT

No. 74

POSTAL STEAMSHIP CORPORATION, PETITIONER,

vs.

SOUTHERN PACIFIC COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 27, 1939.

CERTIORARI GRANTED OCTOBER 9, 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 73

POSTAL STEAMSHIP CORPORATION, PETITIONER,

vs.

STEAMSHIP EL ISLEO, ETC., SOUTHERN PACIFIC COMPANY, CLAIMANT

No. 74

POSTAL STEAMSHIP CORPORATION, PETITIONER,

vs.

SOUTHERN PACIFIC COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX.

	Original	Print
Record from D. C. U. S., Southern New York	1	1
(Postal Steamship Corporation vs. S.S. El Isleo.)		
Statement	1	1
Libel	2	1
Answer	7	4
Interrogatories to libellant	11	7
Libellant's exceptions and answers to certain interrogatories	13	7
Order on exceptions	15	8
Libellant's answers to interrogatories	17	9

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 20, 1939.

Record from D. C. U. S., Southern New York—Continued.

(SOUTHERN PACIFIC COMPANY vs S.S. EASTERN GLADE.)

	Original	Print
Statement	19	10
Libel	20	10
Answer	24	13
Statement of evidence	29	15
Caption and appearances	29	15
WITNESSES FOR POSTAL STEAMSHIP CORPORATION. (DEPOSITIONS.)		
Karl G. Johanson:		
Direct	67	42
Cross	72	46
Redirect	111	74
Recross	112	75
Redirect	113	76
Manuel Batata:		
Direct	115	78
Cross	117	80
Redirect	128	88
Carl Sundquist:		
Direct	129	89
Cross	134	93
Redirect	148	104
Spiros Ghikas:		
Direct	149	104
Cross	153	108
Redirect	166	118
Recross	168	120
Linwood Hudgins:		
Direct	170	121
Cross	179	129
Vasily Maximoff:		
Direct	191	139
Cross	195	142
Allen T. Hudgins:		
Direct	199	145
Cross	213	157
Harry Arthur Stewart:		
Direct	240	178
Cross	255	189
WITNESSES FOR SOUTHERN PACIFIC COMPANY. (In Open Court.)		
Louis Korn:		
Direct	31	17
Cross	44	26

Record from D. C. U. S., Southern New York—Continued.
Statement of evidence—Continued.

WITNESSES FOR SOUTHERN PACIFIC COMPANY.
(In Open Court)—Continued.

	Original	Print
David S. McDonald:		
Direct	262	194
Cross	278	206
Redirect	307	229
Recross	312	232
Redirect	313	233
Recross	313	233
Harry G. Eberly:		
Direct	314	234
Cross	317	236
Redirect	330	246
Julius Jansen:		
Direct	333	248
Cross	338	252
Edmund Jablonsky:		
Direct	346	259
Cross	349	261

EASTERN GLADE EXHIBITS.

No. 10—(Hudgins)—Diagram	210-A	154
No. 11—(McDonald)—Sketch	290-A	222
Opinion, Mandelbaum, J.	354	264

(POSTAL STEAMSHIP CORPORATION vs. S.S. EL ISLEO.)

Final decree	363	270
Notice of appeal	365	271
Allowance of appeal	366	272
Assignment of errors	366	272

(SOUTHERN PACIFIC COMPANY vs. S.S. EASTERN GLADE.)

Interlocutory decree	370	274
Notice of appeal	372	275
Allowance of appeal	373	276
Assignment of errors	373	276
Stipulation and order as to certain exhibits	377	278
Stipulation as to record	381	280
Clerk's certificate (omitted in printing)	382	
Proceedings in U. S. C. C. A., Second Circuit	383	281
Opinion, Swan, J.	383	281
Judgment (Postal S.S. Co. v. S.S. El Isleo)	386	284
Judgment (Southern Pacific Co. vs. S.S. Eastern Glade)	388	285
Clerk's certificate	390	286
Orders allowing certiorari	391	287

[fol. 1]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

A. 113-396

Postal Steamship Corporation, as Owner of the Steamship "Eastern Glade," Libellant,

against

Steamship "El Isleo," Southern Pacific Company, Claimant

Statement

1936

Mar. 12. Libel filed.
June 9. Answer and interrogatories filed.
Oct. 31. Order over-ruling objections to interrogatories.
Nov. 25. Answers to interrogatories filed.
Dec. 3. Before Mandelbaum, D. J.—Trial begun.

1937

June 23. Before Mandelbaum, D. J.—Trial concluded, decision reserved.
Aug. 31. Opinion, Mandelbaum, D. J., filed directing decree dismissing the libel.
Oct. 15. Final decree filed.
" 28. Notice of appeal, petition and order allowing appeal filed, on behalf of libellant.
" 28. Assignment of errors filed by libellant.

[fol. 2] In United States District Court

Libel (Postal Steamship Corporation v. Steamship El Isleo)

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The Libel of Postal Steamship Corporation, owner of the steamship "Eastern Glade" against the Steamship "El

Isleo," her engines, boilers, etc., in a cause of collision, civil and maritime, alleges upon information and belief:

First: At all the times hereafter mentioned the libellant was and still is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office within this district, at 17 State Street, New York City.

Second: The steamship "El Isleo" is now, or during the pendency of process hereunder will be, within the jurisdiction of this Honorable Court.

Third: About 5 p. m., on December 19, 1935, the steamship "Eastern Glade" left the pier of the Standard Wholesale Phosphate Works, Curtis Bay, Baltimore Harbor, bound for the Standard Oil Docks at Canton, Baltimore Harbor. Her master, officers, and crew were at their proper stations and attentive to their duties. She was displaying proper navigational lights. The "Eastern Glade" proceeded through Curtis Bay Channel, and as she approached the [fol. 3] junction of that channel with the Fort McHenry Channel, those on board of her saw the lights of a steamer which subsequently proved to be the "El Isleo," proceeding up the Fort McHenry Channel. The engines of the "Eastern Glade" were stopped and after a short interval the "Eastern Glade" sounded a signal of two blasts to the "El Isleo" to indicate that the "Eastern Glade" was going to proceed up the Fort McHenry Channel. The course of the "Eastern Glade" was altered to her port. The "El Isleo" did not answer the two-blast signal promptly, but about two minutes later sounded a danger signal followed by one blast. The "Eastern Glade" immediately answered with a danger signal and her engines were put full speed astern. The "El Isleo" continued to approach without any apparent reduction in speed and brought her port side into collision with the bluff of the starboard bow of the "Eastern Glade." The "El Isleo" passed on ahead of the "Eastern Glade," whose engines were still running full speed astern. After the vessels cleared, the engines of the "Eastern Glade" were stopped. Subsequently, and after having ascertained that the "El Isleo" did not need assistance, the "Eastern Glade" proceeded to her destination. The collision occurred at about 5:40 p. m. on the western side of the Fort McHenry Channel, close to Buoy #7M. As a result

of the collision the "Eastern Glade" suffered extensive injuries.

Fourth: Said collision and consequent damage were not caused or contributed to by any fault or neglect of the [fol. 4] steamship "Eastern Glade," or those in charge of her, but were due solely to the fault and neglect of the "El Isleo," and those in charge of her in the following, among other respects which will be pointed out upon the trial:

1. She was in charge of incompetent and inattentive persons.
2. She did not maintain a competent and vigilant lookout.
3. She was proceeding at an improper rate of speed.
4. She was proceeding on the wrong side of the channel.
5. She failed promptly to answer the signals of the "Eastern Glade".
6. She failed to take timely and proper measures to avoid collision.
7. After hearing the two-whistle signal of the "Eastern Glade," she negligently continued on at full speed without reducing her speed or altering her course.
8. That when danger of collision was or should have been apparent, she failed to stop and reverse her engines, or to take any other action to avoid collision.

Fifth: By reason of said collision the libellant has sustained damage in the sum of about $25,000, no part of which has been paid, although duly demanded.

[fol. 5] Sixth: All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant prays that process in due form of law according to the practice of this Honorable Court, in causes of admiralty and maritime jurisdiction, may issue against the steamship "El Isleo," her engines, boilers, etc., and that all persons claiming any interest therein may be required to appear and answer on oath all and singular the matters aforesaid, and that a decree may be entered in favor of the libellant against the steamship "El Isleo" for the amount of libellant's damages, together with interest and costs and that the said steamship "El Isleo" may be condemned and sold to pay the same and that the Court will

grant to the libellant such other and further relief as in law and justice it may be entitled to receive.

Barry, Wainwright, Thacher & Symmers, Proctors for Libellant, 72 Wall Street, Borough of Manhattan, New York City.

[fol. 6] *Duly sworn to by Paul Costallat, jurat omitted in printing.*

[fol. 7] IN UNITED STATES DISTRICT COURT

ANSWER (POSTAL STEAMSHIP CORPORATION v. STEAMSHIP EL ISLEO)

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The answer of Southern Pacific Company, claimant of steamship El Isleo, as proceeded against upon the libel of Postal Steamship Corporation, in a cause of collision, civil and maritime, alleges as follows:

First: Claimant denies that it has any knowledge or information sufficient to form a belief as to the allegations of the first article of the libel.

Second: Claimant admits the allegations of the second article of the libel.

Third: Claimant admits that on December 19, 1935, steamship Eastern Glade was proceeding through Curtis Bay Channel, approaching the junction of that channel with Fort McHenry Channel; that El Isleo was proceeding up Fort McHenry Channel; that Eastern Glade sounded a signal of two blasts to El Isleo; that El Isleo sounded a danger signal followed by one blast; that Eastern Glade answered with a danger signal followed by one blast; that Eastern Glade's starboard bow collided with El Isleo's port side at about 5.40 P. M.; that the vessels cleared and that Eastern Glade suffered damages as a result of the [fol. 8] collision. Claimant denies that the Eastern Glade's master, officers and crew were at their proper stations or attentive to their duties; that El Isleo did not answer Eastern Glade's two-blast signal promptly; that about two minutes elapsed between Eastern Glade's two-blast signal and

El Isleo's danger signal; that the collision occurred on the western side of Fort McHenry Channel or close to buoy 7M. Further answering, claimant denies any knowledge or information sufficient to form a belief as to the other allegations of the third article of the libel.

Fourth: Claimant denies the allegations of the fourth article of the libel.

Fifth: Claimant admits demand and nonpayment and denies the other allegations of the fifth article of the libel.

Sixth: Claimant admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court and denies the other allegations of the sixth article of the libel.

Seventh: Further answering, claimant alleges that the true facts are as follows:

On the afternoon of December 19, 1935, steamship El Isleo left Sparrows Point, bound for Rukerts Terminal, Baltimore. The weather was clear, wind northerly, tide slack. As El Isleo proceeded up Fort McHenry Channel, the master was on the bridge with the second officer; a lookout was stationed on the bow. All proper navigation lights were burning and showing brightly. While proceeding up [fol. 9] the channel, steamship Eastern Glade was sighted on the port bow, bound out of Curtis Bay Channel, showing her green side light. El Isleo was showing the Eastern Glade her red side light. Both vessels continued on, and as they approached, the Eastern Glade sounded a two-blast passing signal, which El Isleo answered with an alarm signal, followed by a one-blast signal indicating that she intended continuing on up Fort McHenry Channel. The Eastern Glade continued on, and as it was apparent that there was danger of collision, El Isleo put her rudder hard right and swung to eastward in an attempt to avoid the oncoming Eastern Glade. The Eastern Glade continued on across the channel and her stem struck El Isleo on the port side about amidships, damaging El Isleo. The collision occurred at 5.40 P. M., El Isleo time, outside of and to eastward of the channel.

Eighth: Said collision and consequent damage were not caused or contributed to by any fault or neglect on the part

of claimant, El Isleo, or those in charge of her, but were due solely to the fault and negligence of the Eastern Glade and those in charge of her, in the following respects among others:

1. She was not in charge of a competent person.

2. She was not properly manned.

3. She failed to keep a good lookout.

4. She was proceeding at excessive speed under the circumstances.

[fol. 10] 5. She failed to slow, stop or reverse her engines to avoid collision.

6. She failed to sound proper whistle signals.

7. She failed to pay any or proper attention to El Isleo's whistle signals.

8. She failed to navigate in accordance with whistle signals.

9. She failed to keep out of the way of El Isleo.

10. She proceeded out of Curtis Bay Channel and into Fort McHenry Channel without regard to the presence of El Isleo.

11. She attempted to cross El Isleo's bow without first having obtained her consent.

12. She failed to use her rudder and engines properly.

13. She was out of control.

14. She crowded upon El Isleo's course.

15. She was unseaworthy in that her steering gear or other steering apparatus was not in proper condition.

16. When danger of collision was or should have been apparent, she failed to take proper precautions to avoid it.

All and singular the premises are true.

Wherefore, claimant prays that the libel herein be dismissed with costs.

Burlingham, Veeder, Clark & Hupper, Proctors for Claimant.

[fol. 11] IN UNITED STATES DISTRICT COURT

INTERROGATORIES TO LIBELLANT

Interrogatories to be Answered by Libellant in Writing and Under Oath:

1. Attach a true and complete copy of the Eastern Glade's certificate of license or enrollment.

2. Give the number and positions of officers and men in the deck department of the Eastern Glade at the time she left Phosphate Dock, Baltimore Harbor, on December 19, 1935.

3. Describe the steering gear and steering engines on the Eastern Glade in use at the time of the collision.

4. State when the steering gear and steering engines were last inspected prior to the collision, by whom they were inspected and of what such inspection consisted.

5. State what repairs were made to the steering gear and steering engines within 10 days before and 10 days after the collision and attach copies of the receipted repair bills.

6. State where the Eastern Glade was in Curtis Bay Channel when the El Isleo was first sighted.

7. State the place in Fort McHenry Channel where the El Isleo was when first sighted by the Eastern Glade.

[fol. 12] *Duly sworn to by Chauncey I. Clark. Jurat omitted in printing.*

[fol. 13] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

POSTAL STEAMSHIP CORPORATION, Owner of the S. S. "Eastern Glade," Libellant,

against

STEAMSHIP "EL ISLEO," SOUTHERN PACIFIC COMPANY, Claimant

LIBELLANT'S EXCEPTIONS AND ANSWERS TO CERTAIN INTERROGATORIES

Libellant excepts to and answers the interrogatories propounded by the claimant and attached to the answer herein as follows:

Libellant excepts to interrogatories numbered 1, 2, 3, 4 and 5 and to each of them on the ground that each of them

is immaterial, irrelevant and incompetent and calls for the production of evidence concerning which the claimant does not have the burden of proof.

6. In the vicinity of Can Buoy C3.

7. In the vicinity of Fort Carroll.

Barry, Wainwright, Thacher & Symmers, Proctors for Libellant, 72 Wall Street, New York City.

[fol. 14] *Duly sworn to by John N. Pohley. Jurat omitted in printing.*

[fol. 15] IN UNITED STATES DISTRICT COURT

A. 113-396

ETAL. STEAMSHIP CORPORATION, Owner of S.S. EASTERN GLADE, Libellant,

against

Steamship EL ISLEO, SOUTHERN PACIFIC COMPANY, Claimant

ORDER ON EXCEPTIONS—October 31, 1936

Libellant having excepted to claimant's interrogatories numbered 1, 2, 3, 4 and 5 attached to its answer and such exceptions having been brought up for hearing at a term of this Court for the hearing of motions on the 30th day of October, 1936, and Earle Farwell, Esq., of counsel for libellant, having appeared on behalf of said exceptions, and Burton H. White, Esq., of counsel for claimant, having appeared in opposition thereto, and after due deliberation said exceptions having been sustained in part and overruled in part, it is hereby

Ordered, that libellant's exceptions to claimant's first [fol. 16] and second interrogatories be, and they hereby are, overruled; that libellant's exception to the third interrogatory be; and it hereby is, sustained; that libellant's exception to the fourth interrogatory be, and it hereby is, overruled except that the libellant need not state by whom the inspection was made, and that libellant's exception to the fifth interrogatory be, and it hereby is, overruled except that libellant need not state what repairs were made before

the collision and need not attach receipted repair bills; and it is further

Ordered, that libellant answer the interrogatories to which exceptions have not been sustained as aforesaid.

Samuel Mandelbaum, U. S. D. J.

We hereby waive notice of settlement of the foregoing order.

Barry, Wainwright, Thacher & Symmers, Proctors for Libellant.

[fol. 17] In United States District Court, Southern District of New York

A. 113-396

Postal Steamship Corporation, as Owner of Steamship "Eastern Glade," Libellant,

against

Steamship "El Isleo," Southern Pacific Company, Claimant

Libellant's Answers to Interrogatories

Libellant, Pursuant to the Order of this Court Dated October 31, 1936, Answers the Interrogatories Propounded by Claimant, as Follows:

1. Attached hereto is a true and complete copy of Certificate of Enrollment and License of S.S. "Eastern Glade."

2. One master, one first mate, one second mate, one third mate and eight seamen.

4. Before leaving the phosphate dock the steering gear and steering engines of the "Eastern Glade" were inspected and tested out. The inspection consisted of turning steam on the steering engine, warming it up, draining it, and then operating steering apparatus by putting the helm [fol. 18] hard over from side to side, and making a visual examination of the gear, engines and connections.

5. None.

Barry, Wainwright, Thacher & Symmers, Proctors for Libellant, 72 Wall Street, New York City.

Duly sworn to by Paul Costallat. Jurat omitted in printing.

[fol. 19] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

A. 114-162. 1936

SOUTHERN PACIFIC COMPANY, as Owner of Steamship "EL ISLEO," Cross-Libellant,

against

Steamship "EASTERN GLADE," POSTAL STEAMSHIP CORPORATION, Cross-Respondent

STATEMENT

June 9. Libel filed.
" 26. Answer filed.
Dec. 3. Before Mandelbaum, D. J. Trial begun.

1937

June 23. Before Mandelbaum, D. J. Trial concluded, decision reserved.
Aug. 31. Opinion, Mandelbaum, D. J., filed directing decree in favor of libellant.
Oct. 15. Interlocutory decree filed.
" 28. Notice of appeal, petition, and order allowing appeal filed, on behalf of respondent.
" 28. Assignment of errors filed by respondent

[fol. 20] IN UNITED STATES DISTRICT COURT

LIBEL (SOUTHERN PACIFIC COMPANY v. STEAMSHIP EASTERN GLADE)

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The libel of Southern Pacific Company as owner of Steamship El Isleo against Steamship Eastern Glade, her engines, boilers, etc., in a cause of collision, civil and maritime, alleges as follows:

First. Libellant was at all the times hereinafter mentioned and now is a Kentucky corporation having an office and place of business at 165 Broadway, New York City, and owner of steamship El Isleo, which up to the time of

the collision hereinafter set forth was tight, staunch, strong and in all respects seaworthy.

Second. The steamship Eastern Glade is now or during the pendency of process hereunder will be within this District and within the jurisdiction of this Honorable Court.

Third. On the afternoon of December 19, 1935, steamship El Isleo left Sparrows Point, bound for Rukerts Terminal, Baltimore. The weather was clear, wind northerly, tide slack. As El Isleo proceeded up Fort McHenry Channel, the master was on the bridge with the second officer; a lookout was stationed on the bow. All proper navigation lights were burning and showing brightly. While proceeding up the channel, steamship Eastern Glade was sighted on the [fol. 21] port bow, bound out of Curtis Bay Channel, showing her green side light. El Isleo was showing the Eastern Glade her red side light. Both vessels continued on, and as they approached, the Eastern Glade sounded a two-blast passing signal, which El Isleo answered with an alarm signal, followed by a one-blast signal indicating that she intended continuing on up Fort McHenry Channel. The Eastern Glade continued on, and as it was apparent that there was danger of collision, El Isleo put her rudder hard right and swung to eastward in an attempt to avoid the oncoming Eastern Glade. The Eastern Glade continued on across the channel and her stem struck El Isleo on the port side about amidships, damaging El Isleo. The collision occurred at 5.40 P. M., El Isleo time, outside of and to eastward of the channel.

Fourth. Said collision and consequent damage were not caused or contributed to by any fault or neglect on the part of libellant, El Isleo or those in charge of her, but were due solely to the fault and negligence of the Eastern Glade and those in charge of her, in the following respects among others:

1. She was not in charge of a competent person.

2. She was not properly manned.

3. She failed to keep a good lookout.

4. She was proceeding at excessive speed under the circumstances.

[fol. 22] 5. She failed to slow, stop or reverse her engines to avoid collision.

6. She failed to sound proper whistle signals.

7. She failed to pay any or proper attention to El Isleo's whistle signals.

8. She failed to navigate in accordance with whistle signals.

9. She failed to keep out of the way of El Isleo.

10. She proceeded out of Curtis Bay Channel and into Fort McHenry Channel without regard to the presence of El Isleo.

11. She attempted to cross El Isleo's bow without having first obtained her consent.

12. She failed to use her rudder and engines properly.

13. She was out of control.

14. She crowded upon El Isleo's course.

15. She was unseaworthy in that her steering gear or other steering apparatus was not in proper condition.

16. When danger of collision was or should have been apparent, she failed to take proper precautions to avoid it.

Fifth. By reason of the premises libellant has sustained damage including cost of repairs to El Isleo, detention during repairs and other expenses, in the sum of about [fol. 23] $10,000 as near as can now be estimated, no part of which has been paid although duly demanded.

Sixth: All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant prays that process in due form of law according to the rules and practice of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the steamship Eastern Glade, her engines, boilers, etc., and that all persons having or claiming any interest therein be cited to appear and answer all and singular the matters aforesaid and that this Honorable Court may be pleased to make a decree to your libellant for the amount of the damages aforesaid with interest and costs and that the said steamship Eastern Glade be condemned and sold

to satisfy the same, and that your libellant may have such other and further relief as to the Court may seem just.

Burlingham, Veeder, Clark & Hupper, Proctors for Libellant.

Duly sworn to by Chauncey I. Clark. Jurat omitted in printing.

[fol. 24] IN UNITED STATES DISTRICT COURT

ANSWER (SOUTHERN PACIFIC COMPANY v. STEAMSHIP EASTERN GLADE)

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The answer of Postal Steamship Corporation, claimant of the Steamship "Eastern Glade," to the libel of the Southern Pacific Company against said vessel, in a cause of collision, civil and maritime, alleges as follows:

First. Claimant denies that it has any knowledge or information sufficient to form a belief as to any of the allega-
[fol. 25] tions contained in Article First of the libel, except, upon information and belief, it denies that the Steamship "El Isleo" was, up to the time of the collision with the "Eastern Glade," tight, staunch, strong and seaworthy.

Second. Claimant admits the allegations contained in Article Second of the libel.

Third. Except as hereinafter admitted, claimant, on information and belief, denies each and every allegation contained in Article Third of the libel.

Fourth. Claimant denies each and every allegation contained in Article Fourth of the libel.

Fifth. Claimant denies each and every allegation contained in Article Fifth of the libel, except it admits demand and non-payment.

Sixth. Claimant admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court, but denies that all and singular the premises of the libel are true, as alleged in Article Sixth thereof.

Further Answering the Libel, Claimant Alleges, Upon Information and Belief

Seventh. About 5 P. M., on December 19, 1935, the Steamship "Eastern Glade" left the pier of the Standard Wholesale Phosphate Works, Curtis Bay, Baltimore Harbor, [fol. 26] bound for the Standard Oil Docks at Canton, Baltimore Harbor. Her master, officers and crew were at their proper stations and attentive to their duties. She was displaying proper navigational lights. The "Eastern Glade" proceeded through Curtis Bay Channel, and as she approached the junction of that channel with the Fort McHenry Channel those on board of her saw the lights of a steamer, which subsequently proved to be the "El Isleo," proceeding up the Fort McHenry Channel. The engines of the "Eastern Glade" were stopped and after a short interval the "Eastern Glade" sounded a signal of two blasts to the "El Isleo" to indicate that the "Eastern Glade" was going to proceed up the Fort McHenry Channel. The course of the "Eastern Glade" was altered to her port. The "El Isleo" did not answer the two blast signal promptly, but about two minutes later sounded a danger signal followed by one blast. The "Eastern Glade" immediately answered with a danger signal and her engines were put full speed astern. The "El Isleo" continued to approach without any apparent reduction in speed and brought her port side into collision with the bluff of the starbow of the "Eastern Glade." The "El Isleo" passed on ahead of the "Eastern Glade," whose engines were still running full speed astern. After the vessels cleared, the engines of the "Eastern Glade" were stopped. Subsequently, and after having ascertained that the "El Isleo" did not need assistance, the "Eastern Glade" proceeded to her destination. The collision occurred at about 5:40 P. M., [fol. 27] on the western side of the Fort McHenry Channel, close to Buoy # 7M. As a result of the collision the "Eastern Glade" suffered extensive injuries.

Eighth. Said collision and consequent damage were not caused or contributed to by any fault or neglect of the Steamship "Eastern Glade," or those in charge of her, but were due solely to the fault and neglect of the "El Isleo," and those in charge of her in the following, among other respects, which will be pointed out upon the trial:

1. She was in charge of incompetent and inattentive persons.

2. She did not maintain a competent and vigilant look-out.

3. She was proceeding at an improper rate of speed.

4. She was proceeding on the wrong side of the channel.

5. She failed promptly to answer the signals of the "Eastern Glade."

6. She failed to take timely and proper measures to avoid collision.

7. After hearing the two whistle signal of the "Eastern Glade" she negligently continued on at full speed without reducing her speed or altering her course.

8. That when danger of collision was or should have been apparent she failed to stop and reverse her engines, or to take any other action to avoid collision.

[fol. 28] Ninth. All and singular the premises are true.

Wherefore, claimant prays that the libel herein be dismissed with costs.

Barry, Wainwright, Thacher & Symmers, Proctors for Claimant, 72 Wall Street, New York City.

Duly sworn to by John N. Pohley, jurat omitted in printing.

[fol. 29] In United States District Court, Southern District of New York

Postal Steamship Corporation, Owner of the Steamship "Eastern Glade," Libellant,

against

Steamship "El Isleo," Respondent

Southern Pacific Company, as Owner of Steamship "El Isleo," Libellant,

against

Steamship "Eastern Glade," Respondent

Statement of Evidence

Before Hon. Samuel Mandelbaum, U. S. District Judge

New York, December 3rd, 1936.

Appearances:

Messrs. Barry, Wainwright, Thacher & Symmers, Proctors for Postal Steamship Corporation, E. Farwell, Esq., and J. M. Brush, Esq., of Counsel.

Messrs. Burlingham, Veeder, Clark & Hupper, Proctors for Southern Pacific Company, Chauncey I. Clark, Esq., and Burton H. White, Esq., of Counsel.

[fol. 30] (The claims of the libel and answer are stated.)

Mr. Farwell: I offer the depositions of the following witnesses, called in behalf of the Eastern Glade: Mr. Ghikas, Chief Engineer; Mr. Linwood Hudgins, Third Mate; Mr. Maximoff, Third Assistant Engineer; Captain Allen T. Hudgins, Master, the four depositions being contained in one volume of testimony.

The Court: Those are offered by whom?

Mr. Farwell: By the Postal Steamship.

Mr. Clark: The Eastern Glade.

Mr. Farwell: I also offer the depositions of Carl G. Johanson, Manuel Batata, Carl Sundquist, which three depositions are contained in one volume of testimony, together with the exhibits therein referred to. These are the log books (indicating) that have been marked in connection with the depositions.

Mr. Clark: I offer the depositions of David S. McDonald, Chief Officer of the El Isleo, Henry G. Eberly, Assistant Engineer, Julius Jansen, Acting Quartermaster and Edmund Jablonsky, Seaman.

It developed during the taking of the depositions which Mr. Farwell and I were taking in Baltimore recently that there was an engine bell book which I did not even have at the time, and the records in that book were made by an oiler. That appeared upon the testimony of Eberly, the Assistant Engineer. Since I agreed with Mr. Farwell, I obtained the bell book, and the entries in the bell book compare exactly with the entries in the engine log book, which I had produced and which had been testified to, and in order to avoid the [fol. 31] time and expense of taking the deposition of the oiler, whose name is Prendergast, who is in Texas and sails on a ship going out of Texas in the Gulf of Mexico, Mr. Farwell has agreed to stipulate that Prendergast, if called, would testify that he made the entries in the bell book on page 94 for December 19th, 1935.

Mr. Farwell: That is subject to your assurance that this was the original book in which the contemporaneous entries were made.

Mr. Clark: I make that assurance. Do you want this marked?

Mr. Farwell: I think you'd better have it marked. That stipulation, if your Honor please, does not go so far as to admit either the accuracy or the correctness of the entries, but merely that if the witness were called he would testify he made them.

(The book referred to is received in evidence and marked Respondent's Exhibit A.)

Mr. Farwell: Incorporation and ownership on both sides admitted?

Mr. Clark: Yes.

Louis Korn, being duly examined and sworn as a witness on behalf of the respondent, testified as follows:

Direct examination.

By Mr. Clark:

Q. Captain Korn, what license do you hold?

A. Master.

Q. How long have you held it?

[fol. 32] A. This is my sixth issue. It will expire three years from now, and it will be thirty years.

Q. How long have you been going to sea?

A. It will be forty-eight years.

Q. And you have been with the Southern Pacific Company how long?

A. Twenty-nine years.

Q. And the Southern Pacific Company is the owner of the Steamship El Isleo?

A. El Isleo, right.

Q. How long have you been master of the El Isleo?

A. Somewhat over two years.

Q. About how many ships of the Southern Pacific Company have you been master of?

A. Oh, I couldn't tell you that offhand; a good many.

Q. That is not the only one?

A. No. I came to this one from the El Morante.

Q. What sort of ship is the El Isleo?

A. She is a two master freight steamer about 350 feet long, 47 feet beam, net tons 2557, gross—I will give you the gross if you want it.

Q. What is the gross?

A. Her gross is 4219.

Q. The El Isleo was where on December 19th, 1935?

A. Sparrow's Point.

Q. That is in the vicinity of Baltimore?

A. Sparrow's Point—it belongs to that corporation. Within a few miles of it they own everything. There is a little village attached to it, outside the City of Baltimore.

Q. Did El Isleo leave her loading berth some time on the afternoon of December 19th, 1935?

A. Five p. m.

Q. And you were bound where?

A. Baltimore, Ruckert's Terminal.

[fol. 33] The Court: Was that five in the morning or afternoon?

The Witness: P. M.

Q. When you left the Terminal, who was on the bridge?

A. I was on the bridge.

Q. Who else?

A. The quartermaster.

Q. Who else?

A. And the third officer.

Q. Anyone forward?

A. Yes, an able seaman, Jablonsky.

Q. How was the weather?

A. Strong northwest wind or breeze, we call it; about fifteen mile breeze northwest; clear weather; visibility was good.

Q. Will you indicate, please, on this chart, the Terminal?

A. The Terminal (indicating); Sparrow's Point (indicating).

Q. I will draw from the point indicated by the Master a line, and at the end of the line put the letter "A." In leaving that terminal, what channel did you pass through?

A. Sparrow's Point Channel. That is a private channel maintained by Sparrow's Point, by the Bethlehem Steel Corporation.

Q. It intersects what?

A. Brewerton Channel.

Q. And that is shown on the chart?

A. Right here (indicating).

Q. Then you proceeded through Brewerton Channel to what? What is the next channel?

A. That is what they call the widened channel, cut-off channel; it has a width about twelve hundred feet, for a distance of a little over a half mile, to this buoy here (indicating on chart).

Q. What is the next channel you get into?

[fol. 34] A. We called that intersection here from Buoy 12-B to 4-M.

Q. That is the cut-off?

A. That is the cut-off.

Q. And then what channel do you get into?

A. Fort McHenry.

Q. Now, when you proceeded up Fort McHenry Channel, were you on the bridge?

A. On the bridge.

Q. How did you proceed up that channel?

A. On the ranges.

Q. What do you mean by "ranges"?

A. Right here at Fort McHenry are two lights; the front light is green, a flashing green light, and the rear light is flashing red, and these two lights are in line in the center of Fort McHenry Channel.

The Court: Who operates those lights?

The Witness: They come under the Lighthouse Service.

Q. Fixed lights, are they?

A. No; flashing lights. The front is green; the rear is red.

Q. You came up on these ranges?

A. I came up on these ranges.

Q. Were you in a position to see that yourself?

A. Absolutely.

By the Court:

Q. How far away is this from Fort McHenry, where the two lights are? How far away is that from where you first saw the lights?

A. These lights?

Q. Yes.

A. This channel itself is about four and a half miles long.

[fol. 35] Q. Were you able to see from here (indicating on chart)?

A. Yes, sir; we can see those lights twice as far.

By Mr. Clark:

Q. The Court means can you see them as soon as you get in the channel?

A. Yes.

Q. Did you see them?

A. Oh, yes.

Q. Now, as you proceeded up that channel, did you get on these ranges?

A. Yes, sir.

Q. Was the weather good for seeing?

A. Absolutely clear.

Q. What was the current in the channel?

A. Ebb tide.

Q. That was against your vessel?

A. Yes, against it.

Q. About how much?

A. A good mile.

Q. About what speed were you making?

A. Ordinarily about eight miles; that is eight miles through the water.

Q. With the current against you. About how much over the ground?

A. Not much better than six miles—six and a half.

Q. As you came up the channel, did anybody else come up on the bridge to relieve you?

A. Mr. McDonald came up there before I got out of this channel. He came up on the bridge right after leaving Sparrow's Point Dock.

Q. He was there all the while, was he?

A. He stayed there all the time.

Q. Where was he standing, and where were you standing?

A. I was amidships, on the bridge, and Mr. McDonald was standing near the telegraph, on the right side of the bridge.

[fol. 36] Q. When was the Eastern Glade first sighted, and where was your vessel?

A. Near Fort Carroll here (indicating).

Q. Will you indicate about where your vessel was, off what point your vessel was at the time you first observed the Eastern Glade?

A. (The witness indicates on chart.)

Q. The witness puts a cross, which I put a circle around, off Fort Carroll, which is marked with the letter B. Where

was the Eastern Glade at the time your vessel was in the position which you have marked on the chart with an "X" and a circle around it, off Fort Carroll?

A. (The witness indicated.)

Mr. Clark: The witness indicates another cross which I will put a circle around, which is in the Curtis Bay Channel, and I will mark it with the letter "C".

Q. What were the first signals blown, and which vessel blew them?

A. The Eastern Glade blew two blasts.

Q. What did that indicate?

Mr. Farwell: Objected to.

Mr. Clark: Do you really object to that?

The Court: On what ground do you object? That he is not qualified?

Mr. Clark: We had all the witnesses testify to the same thing, so far, in the depositions.

The Court: You asked him what did that indicate?

[fol. 37] Mr. Clark: What the two blasts indicated.

Mr. Farwell: Well, do you mean what did that mean to the Captain?

Mr. Clark: I mean exactly what I said in my question: What did the two blasts indicate?

Mr. Farwell: Well, unless the question is restricted to what the Captain understood it to mean——

The Court: All right. Suppose you reframe that. What did you understand two blasts to mean? You heard two blasts from the Eastern Glade. What did you understand that to mean?

The Witness: A crossing signal.

By Mr. Clark:

Q. Was there any reply from El Isleo?

A. Yes.

Q. What reply did you make?

A. I answered it with a danger signal.

Q. Anything else?

A. And one blast.

Q. How long was it between the time of the two blasts from the Eastern Glade and your answering signal of four blasts?

A. As long as it takes the order—to give it and execute it

The Court: How long would you say?

The Witness: I would not say over twenty seconds.

Q. And do you remember whether there was any conversation between you and Mr. McDonald at the time?

A. None. I just gave the order.

Q. Did Mr. McDonald agree with you as to the order? [fol. 38] A. He didn't oppose me on the signal.

Mr. Farwell: I object and move to strike the answer out—as to what another man agreed with.

The Court: Strike it out.

Mr. Clark: Well, if your Honor please, the reason I asked that question of the witness, of course, your Honor does not know what has gone on before——

The Court: He can't know just what the other man agrees to. He might or might not.

Mr. Clark: The other man has already testified, as a matter of fact, and said he did agree.

The Court: Is that so, Mr. Farwell?

Mr. Farwell: He said that. I don't know whether he used that language. I have no objection to the Captain's testifying that he did not make any objection.

Mr. Clark: I think it is fair for me to explain to you that in these coastwise vessels, some of the officers have licenses covering certain streams, channels, and tributaries, and others, for others. The master is always master of the vessel, and in charge, and where they are in a channel where McDonald is licensed, of course, McDonald is the master. That is why I bring these things out.

The Court: That is what you tell me but as a matter of law, standing alone, without your elaborating on it, I must [fol. 39] exclude it, on the theory that it calls for a conclusion.

Mr. Clark: Well, McDonald has testified, "I agreed with his order."

"Q. Did you make any suggestions?

"A. No, sir.

"Q. Did you say anything to him?

"A. Not at that time.

"Q. So, he gave the orders. That is correct? You stood by there?

"A. By silence, I agreed with his order."

Mr. Farwell: Well, I have no objection.

The Court: All right. Let that be the answer.

Mr. Farwell: I have no objection to the Captain saying McDonald did not say anything.

By Mr. Clark:

Q. Was there any answering signal, following your four blasts and one blast? From the Eastern Glade?

A. She answered with a four blast and followed it with a one blast.

Q. Was there much of an interval of time between your four and one and her four and one?

A. No.

Q. Did you continue on up the channel?

A. I continued on.

Q. That one blast signal following the four blast signal indicated what?

A. That I was coming up the channel and I demanded the right of way to proceed on my way up the channel.

Q. When did it become apparent to you, Captain, that [fol. 40] there was danger from what this vessel was doing that there would be a collision? How far up had you got?

A. As we proceeded and got nearer each other, it became evident that there would be a collision unless either vessel did something very fast.

Q. What did you do?

A. We proceeded up the channel until we arrived at buoy 8-M—do you want me to proceed with what was done?

Q. Yes, go ahead and answer the question. What did you do?

A. When it became evident that there would be a collision, unless both ships acted immediately, I continued full speed with a hard right rudder.

Q. You are now indicating off the Buoy 8-M?

A. Yes.

Q. And the buoy is marked on the chart with the letter "D." Where did that carry your vessel, Captain? Your right rudder?

A. (The witness indicated on the chart.)

Q. You went around to the position marked with another cross indicated by the letter "E," is that right?

A. Correct. I can't remember just accurate—somewhere around there.

Q. That is your best estimate?

A. Yes.

Q. Will you mark on the chart your approximate position at the time the two blasts were blow by the Eastern Glade, which you answered with four and one?

A. I answered it right here (indicating).

Q. That is where you said you were when you saw her?

A. I saw her as she blew her whistle.

Q. Was it away back there you first blew (indicating)?

A. Yes. Here is about where she blew the whistle (indicating).

Q. Now, when you were in this position which is marked [fol. 41] right here, "E," will you indicate the course of this other vessel, the Eastern Glade?

A. (The witness indicates.)

Q. Now, will you please mark the place of collision?

A. (The witness indicated.)

Q. Will you put on there the course of the other vessel, as near as you can give it?

A. I am not positive about this (indicating).

Q. You don't know whether it was inside or outside of the two buoys at the edge of the channel?

A. No.

Q. Well, put in about how he came out, to the best of your knowledge.

A. (The witness indicated.)

Q. Now you have marked a course which cuts in——

A. Cuts across.

Q. Cuts across the buoy, but you don't know whether he did or not?

A. No.

Q. What was the angle of collision?

A. (The witness indicated on the chart.)

Q. I will mark this "F." Do you know what your heading was?

A. Northeast by north, approximately.

Q. I will mark "E. G." for Eastern Glade and "E. I." for El Isleo. That is about the angle of collision, is it, Captain?

A. About that (indicating).

Q. Was your vessel El Isleo at any time to the westward of the middle of the channel where the ranges are?

A. No, absolutely not.

Q. Are you positive of that?

A. Absolutely.

Q. Was your rudder ever to the left?

A. No.

Q. What was done with your engines, if anything, and when was it done?

[fol. 42] A. I never changed my course, except I came up here full speed and came through here (indicating) when I hard-righted the rudder, and full speed right up to the time of the collision.

Q. Then what was done with the engines?

A. Stopped.

Q. What extent of time was there between the collision and the stopping? Which came first and what was the time between?

A. Stopped first.

Q. About how much time was there between the stopping and the collision?

A. Oh, only seconds.

Q. What was the object, Captain, of going up full speed?

A. To avoid a collision.

Q. Could you have gained anything by stopping?

A. No. I would have endangered my ship. I had a thousand tons of steel on.

Q. What was the point of contact? What side of your ship?

A. Right amidships.

Q. What part of the other vessel struck your vessel?

A. The bow; the Eastern Glade's stem struck the El Isleo right amidships.

The Court: Your ship was struck amidships?

The Witness: Yes, sir.

Q. Were you able to see any mark, landmark or beacon, after the time of the collision, that would give you any indication of your heading?

A. That air beacon (indicating on chart).

Mr. Clark: Witness indicates position of air beacon which is marked on the chart with a "G."

[fol. 43] Q. In other words, this beacon here, which I will put a cross and a circle over—your ship was headed for that beacon at the time of the collision?

A. Yes.

Q. Captain, when you first observed the Eastern Glade, what light or lights was she showing to you?

A. She showed her masthead lights, her range lights, and a green sidelight.

The Court: Is there any dispute about the lights?

Mr. Clark: I am not asking this question to cover any point as to whether they were good or not. It is to show that it was green to red on crossing. That is the purpose of this question.

By Mr. Clark:

Q. And were her range lights open?

A. Wide open.

Q. And she bore to the right on your port bow?

A. About four points.

Q. And at that time you were showing her what light or lights?

A. Showed her the range lights wide open and a red side light.

Q. Did you at any time show her your green light?

A. Not at any time.

Q. Did you at any time show her your headlights?

A. No.

Q. The vessels were at all times in what situation?

A. A crossing situation.

Mr. Farwell: I object to that. That is a conclusion of law. That is for the Court to decide.

Mr. Clark: I don't agree with you on that. I think a [fol. 44] master mariner is entitled to say what the situation is. The reason I say that is this: That in order to blow signals and navigate a ship you must know what situation applies. It is necessary, therefore, for him to say on the witness stand what situation applies and what situation he was navigating under.

The Court: I will accept his answer.

Mr. Clark: Your witness.

Cross-examination.

By Mr. Farwell:

Q. Captain Korn, you were on the bridge from the time your ship left Sparrow's Point until after the collision?

A. Right up to the dock.

Q. You were watching what was going on?

A. Absolutely.

Q. Did any other traffic interfere with you and the Eastern Glade?

A. Not that I know of. I believe there was a ship coming down the channel, but she was well up; nothing interfered with us.

Q. She was away up the channel?

A. Yes.

Q. It didn't interfere in any way with either of the two vessels?

A. She didn't at the time.

Mr. Clark: I offer in evidence the chart. I forgot that.

(Chart is received in evidence and marked Libellant's Exhibit 1, December 3rd, 1936.)

Q. Captain, your vessel, El Isleo, is a coastwise vessel, isn't she?

[fol. 45] A. Well, she is a coastwise vessel. That is what she is employed in, coastwise trade.

Q. She is a sea-going vessel?

A. She is a sea-going vessel.

Q. You were not sailing under register, were you?

A. No.

Q. Your ship was on the starboard side of the channel when you passed Fort Carroll in the position "B," were you not?

A. That is what I said. That is what I indicated here, on the right side of the channel.

Q. The mark on the chart at "B" is a cross and that is clearly on the right hand side of midchannel?

A. Right.

Q. And that is where the ship was?

A. Yes, as nearly as I know, yes.

Q. Now, then, later on you came back on the ranges, or did you continue up on that side of the channel?

A. I always held the right side of the channel right along.

Q. Well, then, as you were coming up the channel, you say that your ship was on the right hand side of midchannel?

A. Yes.

Q. She wasn't on the ranges, was she?

A. She was on the ranges. Do you realize how many inches that is, in the ranges——

Q. Captain, do you mean to say if you are off the center of the channel the ranges do not open up, so that that is perfectly plain?

A. There is no ship built yet that will keep your ship on the ranges.

Q. That is not the question I asked you.

A. What did you ask me?

Q. If you were on the starboard side of midchannel, [fol. 46] isn't it a fact that the ranges indicate that clearly, and that they open out?

A. Very slightly.

Q. But they indicate it, don't they?

A. Yes, right.

Q. So, while you were coming up there, you were not in the center of the channel, were you?

A. Not over here; I couldn't be in the center of it.

Q. You were on the starboard side?

A. Yes.

Q. Didn't you tell the quartermaster to keep on the ranges?

A. Right.

Q. And did you tell him that he was right straight on the ranges several times?

A. Yes.

Q. That would mean you were not on the starboard side of the channel, wouldn't it?

A. It don't mean any such thing. There is no quartermaster born who could keep a ship on the ranges; not that class of ship. You are not steering automobiles. You are steering a steamer.

Q. Well, the fact of the matter is, you had to swing over to your port to get on the range?

A. That is what they all do. Did you ever hear of a steamer that you could keep her on a line?

Q. Now then, Captain, you said you blew an alarm signal in answer to the Eastern Glade's two blasts, when you were about in position marked "B"?

A. Correct.

Q. At that time, didn't you change your course to starboard?

A. No.

Q. And haul over?

A. No.

Q. I call your attention to the testimony of your pilot——

Mr. Clark: Mr. Farwell is about to read from the testi- [fol. 47] mony of another witness. I object. The witness on the stand is not required to comment on the testimony of another witness.

Mr. Farwell: I am not asking him to comment on it.

Mr. Clark: You are calling his attention to it.

Mr. Farwell: I am calling his attention to it.

The Court: You are calling his attention to it and the Captain might answer yes or no. What is the pilot's name?

Mr. Farwell: McDonald.

The Court: Very well.

By Mr. Farwell:

Q. Page 53, he testified that after the ship had got in that position "A" on his chart, "We were just off the range line and centered on her own side," meaning on his starboard side, "about in the middle, on the starboard side." Before that he said he had been in the middle of the channel. "Q. Who gave the order to haul over a little bit to starboard, between position 'E' and 'A'? ('E' being the position off Fort Carroll and 'A' farther up.) A. Captain Korn." That was after you had seen the Eastern Glade. Did you give any order to starboard or to go on right there and haul over to starboard?

A. I have already told you, when we came to that buoy, we hard-ruddered.

Q. That is long before you came to the buoy.

A. I usually kept on my own side of the channel. The orders were given by me; no one else.

[fol. 48] Q. Captain, your third mate testified that after seeing the Eastern Glade and before you blew a whistle to her, you hauled a little bit over to your starboard, and that you gave that order?

A. I don't remember.

Q. Did you give that order?

A. I don't remember.

Q. Did you change your course to starboard between the time of seeing the Eastern Glade and the time that you blew a whistle to her?

A. I don't remember, no.

Q. You may have done it?

A. I don't believe it.

Q. Are you familiar with the shoal spot with eighteen feet of water in the vicinity of buoy 8-M?

A. Sure.

Q. Will you mark that spot on the chart so the Judge can see where it is?

A. Neither ship could draw eighteen feet of water. My ship was drawing sixteen and the other one was drawing less. That has no bearing on this whatever.

(The position of the eighteen foot shoal is marked with the letter "H.")

Q. Well, you could have changed your course and gone right over that spot?

A. I certainly could; certainly; that has nothing to do with me at all; I could go much closer in if I could avoid the collision, but they wouldn't let me.

Q. And at the time your ship was abreast of the eighteen foot spot——

A. Yes.

Q. —did you think that there was any danger of collision?

A. It became apparent that there would be one.

[fol. 49] Q. Why didn't you change your course at that spot, instead of waiting until after you got up beyond the buoy?

A. I was following the rules of the road.

Q. You did change your course, didn't you?

A. When it became imminent that there would be a collision, and I would have it out of the channel, not in the channel.

Q. Why didn't you change your course sooner?

A. Because I was following the rules of the road. I had blown one whistle, and it is for me to keep my course and speed.

Q. But, Captain, you did change your course, didn't you?

A. When it became imminent that there would be a collision I am compelled to do something, and I did the only thing I knew to prevent it.

Q. Then, do you say that you did not realize that there was going to be danger of a collision until you got up to Buoy 8-M, the buoy marked with the letter "D"?

A. Right.

Q. What I am after is this, Captain: At some time during the procedure, you changed your course?

A. I just told you I changed my course with a hard right rudder; all I could give her, and I would have given her more speed if I could. I was going full speed.

Q. Why didn't you change it sooner?

Mr. Clark: I object to it. He has already answered the question three times.

Q. Was it because you didn't think there was any danger of a collision?

A. Of course, I didn't; positively not. If the other ship [fol. 50] followed the rules of the road there wouldn't have been any collision. There shouldn't have been any. It was a perfectly clear night.

By the Court:

Q. What rule do you say the other captain should have followed?

A. Articles 19 and 23.

Q. What is that?

A. That applies to crossings, where one vessel has the right of way; it is obliged to keep out of the way of the other vessel. The vessel that has the right of way can keep her course and speed.

Q. Did you considered your ship to be the privileged ship?

A. I did, yes.

Q. Under what rule did you consider it?

A. Under 19; Article 19.

By Mr. Farwell:

Q. Now, Captain, you just testified that you didn't consider that there was danger of collision until you turned your course to starboard when you got up to Buoy 8-M?

A. Yes, sir.

Q. And you testified before the U. S. Local Inspectors in Baltimore, did you not?

A. I did.

Q. And that was very shortly after the collision, wasn't it?

A. Yes.

Q. Do you remember being asked this question by Inspector Tyler:

Mr. Clark: What page?

Mr. Farwell: 13.

"Q. From the position of the two vessels when you first [fol. 51] sighted her, did it appear that there was danger of the collision if both vessels held their courses?

A. Yes.

That was correct testimony, wasn't it?

A. Correct.

Q. Now, you were asked by Mr. Clark what the two-whistle signal of the Eastern Glade indicated; if you were coming out of Curtis Bay Channel and you were intending to turn up into the Fort McHenry Channel, wouldn't a two-whistle signal be proper to indicate your change of course to port?

Mr. Clark: I object to the question as to form.

The Court: Reframe it.

By Mr. Farwell:

Q. If a vessel were coming out of the Curtis Bay Channel and intended to turn to her port up the Fort McHenry Channel, and there was another vessel coming up the Fort McHenry Channel, wouldn't a two-whistle signal indicate to you that the vessel in the Curtis Bay Channel was going to turn to port to go up?

Mr. Clark: Don't answer the question. I object to it as to form, as I did to the other question, and I object for an additional reason: You will notice in the question that Mr. Farwell has framed——

The Court: I can separate that question.

[fol. 52] Mr. Clark: He included the words "she intended to go up."

The Court: Mr. Farwell sees that.

Mr. Clark: You can't include those words, because he doesn't know what that vessel intended to do.

Mr. Farwell: All right. I have two ideas in the question.

Mr. Clark: Well, don't include "if the vessel intended" because he doesn't know what the vessel intended to do. All he does is see her lights.

By Mr. Farwell:

Q. Did the two-whistle signal of the Eastern Glade indicate to you that she was going to turn up——

A. No.

The Court (Continuing): —Fort McHenry Channel?

The Witness: No.

Q. What did it indicate to you?

A. Crossing my vessel.

Q. That she was going to cross the channel?
A. Cross my bow.
Q. That she was going to cross the channel?
A. Cross my bow.
Q. Well, where would she go?
A. None of my business. She could go if she wanted—she went there anyhow.
Q. And at the time you heard that you had no doubt in your own mind that the Eastern Glade would run across your bow?
A. That is what happened.
[fol. 53] Q. Now, again I read from your testimony before the Local Inspectors, also at page 13:

"Q. What did you understand the Eastern Glade was going to do when you received that first two-blast signal from him?
"A. I didn't know whether he was going to cross my course or going up the channel."

Isn't that true?
A. What is true?

Q. That you didn't know whether he was going to cross your course or was going up the channel?
A. I didn't know. I didn't run that ship. I run my own ship.
Q. But you didn't know what he was going to do, did you?
A. Absolutely. I couldn't run two ships. I got all I can do to run one.
Q. You were in doubt?
A. I wasn't in doubt what I was doing.
Q. Well, you were in doubt as to what he was doing?
A. I never considered him at all. I could see his lights. I had all I could do to watch my own ship. I followed the rules of the road as strictly as possible.
Q. Captain, that is not the point.
A. The rules of the road tells me what to do.
Q. You testified before the Local Inspectors that he was either going to cross your course or he was going up the channel?

Mr. Clark: He hasn't denied it.

Q. Isn't that so? You were in doubt?
A. He had a right to go there.

Q. You were in doubt as to what he was going to do?

A. I didn't doubt him at all. I had nothing to do with [fol. 54] that ship. He showed me his lights, showed me which way he was heading, and I know his speed and course, and I watched him, but what he was going to do after, I don't know. It was none of my business.

Q. You were in doubt as to what he was doing from the moment he blew two whistles?

A. I was not. I wasn't in doubt about him at all. As soon as he gave me one whistle signal to proceed, my course was laid out. I followed my course full speed. "Follow your course full speed," the rule tells me.

Q. Captain, didn't you, after the two whistles were blown by the Eastern Glade and before you put your rudder hard right, move over further to starboard to give the Eastern Glade more room?

A. To keep on my own side of the channel; that is all.

Q. But you did move over further to starboard?

A. I always keep on the right side of the channel.

Q. Captain, can't you answer the question?

A. Put that question, please?

Q. After you blew the alarm signal and before you put your rudder hard right, you altered the course of your ship to starboard so as to move further over on your starboard side?

A. I don't remember, but I want to say this; you know that channel is six hundred feet wide, and it is for me to keep on the right side of that channel.

By the Court:

Q. You say as soon as she gave you the signal you proceeded?

A. Yes, sir.

[fol. 55] Q. What signal was that that he gave you?

A. He answered my danger signal with his danger signal, four blasts, and blew one blast on the whistle, which indicates to me to go ahead, he is giving me the right of way, and it compels me by the rules of the road, to keep my course and speed. The rule very plainly states——

By Mr. Farwell:

Q. Captain, when you say the Eastern Glade blew four whistles and one whistle, that is only what you think you heard, isn't it?

A. Well, I hear pretty good, and so does other people on the ship.

Q. But, Captain, the Master that blew that whistle, and the captain of the ship, the Eastern Glade, both deny it. Isn't the fact, Captain, you were so set on holding your course that when you heard these whistles, you assumed there was a four-blast signal and a one-whistle signal?

A. I heard them.

Q. Because there is no one on the Eastern Glade, Captain, that admits blowing the whistles you say you heard blown; not a single person.

Mr. Clark: I object to Mr. Farwell's method, as to the one-blast signal, and I also think you are mistaken in your statement. I don't think your oratory was a question; it was merely a statement for the record, and I don't think the statement is true.

Mr. Farwell: That is my impression.

The Court: Of course, you men who are acquainted with [fol. 56] the depositions, know more about that than I do. Is there a question as to whether the Captain of the Eastern Glade gave the proper signals? Is there a question?

Mr. Farwell: My ship, when we heard these four whistles and one blast, we blew backing whistles, and we immediately reversed. We didn't say "Come on" or anything like that. That is our testimony.

The Court: That is in issue here.

Mr. Farwell: That is a very important issue.

Mr. Clark: If your Honor please, we had the right of way, whatever was blown. If there weren't any whistles blown, we had the right of way in this situation.

The Court: Do you mean to say, Mr. Clark, that a privileged vessel has the right of way regardless of any signals?

Mr. Clark: Yes, in a crossing situation.

The Court: Is that the rule?

Mr. Clark: Yes, in a crossing situation, the privileged vessel has the right of way and holds her course and speed until danger of collision is imminent, and only then must she take steps to avoid a collision. Isn't that a fair statement of the rule?

Mr. Farwell: Well, subject to this——

Mr. Clark: Unless this is a special circumstance situation, which you and I don't agree on.

[fol. 57] Mr. Farwell: Well, if it is a crossing situation——

The Court: Only a crossing situation?

Mr. Farwell: If it is a special circumstance situation, and then there is a further point——

Mr. Clark: You want to make that clear to the Court, that this is a special circumstance situation?

Mr. Farwell: No, no.

Mr. Clark: Because I will put my hat in the ring on that.

By Mr. Farwell:

Q. You said eventually you put your rudder hard right?

A. Right.

Q. That was in order to avoid an imminent collision?

A. A collision.

Q. At that time you were satisfied, were you, that the Eastern Glade, by itself could not avoid a collision, and it was necessary for you to do something?

A. It certainly was. She didn't do anything.

Q. Now then, Captain, why didn't you reverse your engines at that time?

A. I didn't want to sink my ship. I wouldn't do it for you or anyone else. It would have sunk that ship right there in the channel, if I done anything like that.

Q. How fast were you coming up the channel?

A. I was going eight knots.

Mr. Clark: Through the water.

Q. Through the water?

A. Right.

[fol. 58] Q. But you were only making six or six and a half knots over the ground?

A. That is all.

Q. And if you had reversed full astern how long would it have taken? How far would your ship have advanced before you came to a standstill?

A. At what point did you expect me to reverse my engines, please?

Q. I say at any point.

A. At any point?

Q. You were going up there, making six knots, over the bottom?

A. Yes.

Q. Isn't that right?

A. Yes.

Q. And if you reversed, full speed astern, how far would your vessel have advanced until she came to rest, over the bottom?

A. Oh, I couldn't just tell you that. The ship has quite a little headway. I had probably fifteen hundred tons of copper and the vessel is heavy and she continues her headway, and she will keep her headway on anyhow for a couple of hundred yards.

Q. About two hundred yards. Your normal full speed is twelve knots?

A. Yes.

Q. And you were only making eight knots through the water?

A. Yes.

Q. And if you reversed, if you backed, you could overcome your headway in about two hundred yards, you think?

A. Yes.

Q. Now, you were in control of the El Isleo from the time she left the dock until the collision, weren't you?

A. Absolutely in charge.

Q. Were you in charge of her navigation?

A. In charge of her navigation.

Q. You testified here, Captain, that the interval between the two-whistle signal from the Eastern Glade and your [fol. 59] sounding of the alarm whistle, was not over twenty seconds. That is what you said to-day?

A. About twenty seconds.

Q. I again read from your testimony before the U. S. Local Inspectors:

"Q. What was the lapsed time between the time the Eastern Glade blew two whistles and the time that you blew the danger signal?

"A. I would not say it was more than one minute."

Do you remember so testifying before the Local Inspectors?

A. I don't remember that. As I say—did I say it was less than a minute?

Q. I am reading exactly what your language is here.

Mr. Clark: It was more than a minute, wasn't it?

Q. Today you use precisely the same phraseology; you said "I would not say it was more than twenty seconds."

A. I didn't say that at all. I say about twenty seconds.

Q. The record speaks for itself, Captain. Your testimony will be written out. But anyway, that is what you said down in Baltimore, when you testified before the Local Inspectors, isn't it?

A. Yes. We have no way of specifying time on ships on a clock that shows any less time than a minute.

Mr. Farwell: I move to strike it out as not responsive.

[fol. 60] The Court: Strike it out. Captain, just answer the question.

(At this point a five minute recess was taken.)

By Mr. Farwell:

Q. Captain, at what time were you scheduled to sail from Baltimore?

A. Friday night.

Q. That was the night of the collision?

A. No; the next night.

Q. The next night?

A. I believe that is Thursday, the 19th? Friday night it was scheduled to sail.

Q. What date was that?

A. The 20th.

Q. What did you have to do? Load cargo?

A. Yes.

Q. You were anxious to get up there as quickly as possible, so as to load that cargo?

A. No, we didn't load that night at all.

Q. You got up there too late to load?

A. No, if we have to load we work day and night, but that night we didn't have any cargo to load.

Q. Captain, in the situation that these two vessels were, that is, you going up Fort McHenry Channel and the other ship coming out of Curtis Bay Channel, if the vessel coming out of Curtis Bay Channel wanted to turn to her starboard to go down the channel, what whistle signal would she blow? What whistle signal would be proper for her to blow?

Mr. Clark: I object, if your Honor please. That again includes in the question the intention of the vessel—what she [fol. 61] wanted to do, which is the intention of another vessel on the water. She blows a signal and the other vessel hears the signal, but her intention is unknown to the man on the other vessel, except for the signal.

The Court: Well, there is something to that.

Q. Suppose you were coming out of the Curtis Bay Channel, and another vessel were coming up the Fort McHenry Channel—in other words, if you had been on the Eastern Glade and you wanted to turn down the Fort McHenry Channel, what whistle signal was proper to blow in that situation?

Mr. Clark: Same objection. These two vessels are in sight of each other and they are in certain positions, showing certain lights, and one blows a signal and the other blows a signal——

The Court: Of course, I can see in that question, no matter what answer you get it won't give you the particular cause of the collision here.

Mr. Farwell: But it has a bearing on the situation.

The Court: You mean you are testing his knowledge?

Mr. Farwell: He is an expert. He has testified as to what this two-whistle signal indicates.

The Court: I will let him answer.

[fol. 62] A. If I was on that ship coming out of Curtis Bay Channel, and I saw a ship coming up Fort McHenry Channel, I would blow no whistle and stop until she got past.

Q. You would not indicate your intention at all, even if you were turning?

A. Yes.

Q. If you were turning to starboard?

A. Yes. That is the pilot's way of working across the channel. You have to do that every time in Baltimore.

Q. Wouldn't you blow one whistle?

A. No; blow no whistle. Stay in the channel until the channel was clear.

Q. Now then, you said this was a crossing situation?

A. Yes, sir; absolutely.

Q. That the vessel that on your starboard hand had to hold her course and speed?

A. Yes, right.

Q. Assume, Captain, that your ship was going down the Fort McHenry Channel, had left Baltimore and was going down, and a ship was coming out of the Curtis Bay Channel on your starboard bow. Do you say that that is a crossing situation?

Mr. Clark: Just a minute, your Honor. I object. Now, Mr. Farwell is going into an assumption.

The Court: It is an assumption, but I will allow the answer.

A. Absolutely. That is a crossing situation, of course.

Q. So, it would be the duty of the vessel coming out of Curtis Bay Channel to hold her course and speed?

A. If she demands it.

[fol. 63] Q. Isn't the duty, according to your idea, irrespective of whether there is any demand or not?

A. The demand is duty. It is all one. It is exactly one. It is both the duty of the pilot and the man on the other ship. It is the same thing.

Q. As I understand it, you say it would be the duty of the vessel coming out of the Curtis Bay Channel to hold her course and speed? She couldn't slow down. She couldn't turn; she would have to keep on?

Mr. Clark: I object to that, your Honor. Mr. Farwell is assuming some other situation. I suppose the next question will have an assumption in reference to the English Channel.

The Court: Under the assumptions you raise, other accidents or collisions might happen, and we are not confining ourselves to what exactly happened. However, I will let him answer, nevertheless. There is no jury here, although I don't see the importance or relevancy of it.

Mr. Farwell: If your Honor please, it doesn't make any difference whether the vessel was going up the channel or down the channel, if the Captain is correct, that it was a crossing situation, it would be a crossing situation in either event.

The Witness: That is absolutely correct.

The Court: Well, I think that both sides will concede that it is a crossing situation.

Mr. Farwell: I don't. I must emphatically don't concede that, and I will cite cases to your Honor.

[fol. 64] The Court: That it is not——

Mr. Farwell: That it is not a crossing situation; that it is a special circumstance. I don't want to argue the case at this time.

The Court: I understand. You say it is a special circumstance and not a crossing situation?

Mr. Farwell: Yes.

By Mr. Farwell:

Q. You say if your ship had been going down the Fort McHenry Channel and the Eastern Glade had been coming up and if one whistle would have been exchanged it would have been the duty of the Eastern Glade to hold her course and speed?

Mr. Clark: I object to the "if". You might just as well assume a case over in the English Channel or the East River or the North River or the Mississippi River. We are not trying other collision cases.

The Court: If this question was put while a jury was in here I would have to rule it out. I am only accepting it because there is no jury. However, again I shall overrule your objection and take it, but for myself, it is merely burdening the record. I doubt whether I would give it any thought if I were to examine the record on that theory.

Mr. Farwell: I am only demonstrating, your Honor, that it can't be a crossing situation.

[fol. 65] The Court: You won't be able to prove it by this witness on cross examination: That is my opinion.

Mr. Farwell: I would like to have the witness answer that question.

(The last question was read by the stenographer.)

Mr. Clark: And I object to it.

The Court: Objection overruled.

By Mr. Farwell:

Q. Her course and speed?

A. That is correct; if both ships exchange a one-whistle signal, it would be the duty of the Eastern Glade to proceed and the burdened vessel going down the channel would have to slacken her speed and stop or reverse her engines and give that ship the right of way.

Mr. Farwell: That is all.

Mr. Clark: That is all.

[fol. 66] DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK

POSTAL STEAMSHIP CORPORATION, as owner of the Steamship "EASTERN GLADE," Libellant,

against

STEAMSHIP "EL ISLEO," Respondent

Depositions taken on behalf of the Libellant at the office of Messrs. Barry, Wainwright, Thacher & Symmers, 72 Wall Street, New York City, March 14, 1936, at 10:30 o'clock A. M.

Appearances

Messrs. Barry, Wainwright, Thacher & Symmers, Proctors for the Libellant, by Earle Farwell, Esq., of Counsel.
Messrs. Burlingham, Veeder, Clark & Hupper, Proctors for the Respondent, by Stanley R. Wright, Esq., of Counsel.

It is Stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived, stenographer's fees to be taxable.

It is Further Stipulated that the depositions may be used in the cross action to be instituted by the owners of the El Isleo against the Eastern Glade.

[fol. 67] KARL G. JOHANSON, being duly sworn and examined as a witness on behalf of the Libellant, testified as follows:

Direct examination.

By Mr. Farwell:

Q. Mr. Johanson, you are a licensed officer of steam vessels?
A. Yes, sir.
Q. What license do you hold?
A. Master's.
Q. Unlimited?
A. Yes, sir.
Q. How long have you held that license?
A. Nearly twenty years. I am also a pilot in several ports on the East Coast and West Coast, including Baltimore.

Q. Where is your home?

A. 4603 Mainfield Avenue, Baltimore, Maryland.

Q. Were you aboard the Eastern Glade on December 19, 1935?

A. Yes, sir.

Q. What position did you hold?

A. Chief mate.

Q. When did you join the Eastern Glade?

A. I joined on December 17th, in the morning.

Q. That is 1935?

A. Yes, sir.

Q. Was the ship at Baltimore then?

A. Yes, sir, at the Standard Phosphate Works, Curtis Bay.

Q. And about what time on December 19th did the Eastern Glade leave the dock?

A. We left about five P. M., sir.

Q. And where were you going?

A. We were going to the Standard Oil dock at Canton, Baltimore Harbor, to take fuel oil.

Q. When the ship got under way to start out where were you?

A. On the f'sle'castle head, sir.

[fol. 68] Q. Did you remain on the forecastle head until the collision?

A. No, sir, the captain called me up on the bridge and talked to me.

Q. And where was the ship when you came up on the bridge? I mean, in what channel was she?

A. In the Curtis Bay Channel, sir.

Q. After you got on the bridge did you notice the lights of any other vessel?

A. Yes, sir, I noticed the lights of a steamer coming up Fort McHenry channel abo three or four points on the starboard.

Q. And what lights did you see?

A. The mast head light, range light and the port side light.

Q. Were any whistles blown by your ship?

A. Yes, sir, we blew two blasts.

Q. Was any reply made to them?

A. Yes, sir. The other steamer answered by four short blasts about a minute and a half later.

Q. When the other ship answered with four short blasts what was done on your ship?

A. Captain Hudgins blew four short blasts.

Q. What, if anything, was done with the engines when you blew four blasts?

A. The engines were stopped.

Q. The engines had been stopped?

Mr. Wright: I object to that.

Q. At the time that the four blasts were blown by the other ship and you answered with four blasts was any signal given to the engine-room on your ship that you know of?

A. Well, the third mate, he handled the telegraph and the engines, as far as I remember, stopped.

Q. Were your engines reversed before the collision?

[fol. 69] A. Yes, sir, full speed astern—stopped and reversed full speed astern.

Q. When with respect to the four blasts whistle, were the engines reversed?

A. I beg your pardon?

Mr. Wright: Which four blasts?

Mr. Farwell: The four blasts blown by this ship.

A. After we blew four blasts the engines were stopped.

Q. When were they reversed?

A. A few seconds later or about the same time, I might say.

Q. Your ship was bound for the Canton Docks?

A. Yes, sir.

Q. How did you have to turn, in what direction?

A. To the left.

Q. Wait until I finish the question. How did you have to turn in order to get from the Curtis Bay Channel up to the Canton Docks?

A. We had to proceed out of the Curtis Bay Channel and turn to the left up to Fort McHenry Channel.

Q. Do you know whether there is any buoy, lighted buoy at the junction of Curtis Bay Channel and Fort McHenry Channel?

A. Yes, sir, 7 M, lighted buoy, flashing white.

Q. Buoy No. 7 M?

A. Yes, sir.

Q. That is at the north side of the junction?

A. Yes, sir.

Q. Did you see that buoy before the collision?

A. Yes, sir.

Q. How far off that buoy did the Eastern Glade pass?

Mr. Wright: I object to that.

[fol. 70] A. About twenty-five feet, sir, between twenty-five and fifty feet.

Q. Where was that buoy at the time of the collision?

A. Well, it was over the stern, sir, on the port quarter.

Q. About how far off?

A. I should judge about one hundred feet, the way I saw it, from the fo'castle head.

Q. Did you remain on the bridge up to the time of the collision?

A. No, sir.

Q. What happened?

A. Just before the collision happened the Captain ordered me to go ahead to the fo'castle head and stand by the anchor.

Q. Were you able to get up to the fo'castle head just before the collision happened?

A. Yes—just as I was on the port side the two ships collided.

Q. Are you familiar with the Fort McHenry range lights?

A. Yes, sir.

Q. Did you notice that range light before the collision?

A. Yes, sir.

Q. Up to the time of the collision had you crossed that range—had you gotten over on the eastern side of that range?

A. Yes, sir—no, sir, we had not.

Q. On which side of the Fort McHenry Channel did the collision occur?

A. On the west side of the channel, sir.

Q. As the vessels approached just before the collision, which vessel was going the faster?

A. The El Isleo, the way I seen it.

Q. Did she appear to slow down before the collision?

A. It did not seem that way to me, sir.

[fol. 71] Q. What part of the ships came together?

A. Our stem or starboard bow and her port side.

Q. Whereabouts on the port side of the El Isleo?

A. I should say in the forward bridge or in that neighborhood, abreast of the stack. I can't answer correctly.

Q. Could you observe whether the El Isleo appeared to slow down before the collision?

A. No, sir, I did not observe that, sir.

Q. Did she appear to continue at full speed?

Mr. Wright: I object to that. There has been no testimony it was going full speed.

A. It appeared to me she was going full speed—well, I don't know what her full speed is, really.

Mr. Wright: I move to strike all this discussion of the witness as not responsive.

Q. Did she appear to continue at the same rate of speed that she had been going?

A. She did for a while, sir.

Q. After the collision where did the Eastern Glade go?

A. Well, I went up forward to the fo'castle head and I really—I stood at the anchor as I was told to do. I really did not keep track of where the ship was going.

Q. Did the ship anchor?

A. No, sir.

Q. Did you got to the Standard Oil Dock?

A. Yes, sir, but just after a while, later, after the collision we hailed the other steamer, spoke to him and we both proceeded.

Mr. Farwell: That is all. Your witness.

[fol. 72] Cross-examination

By Mr. Wright:

Q. You say the El Isleo seemed to continue at the same speed for a while?

A. Yes, sir.

Q. Have you any way of judging whether her speed had been full ahead or half ahead?

A. Well, I could judge by the speed she was coming up. She was making approximately ten miles an hour or maybe more.

Q. What was the tide?

A. The tide was—I did not look that up, sir.

Q. Well, do you remember?

A. No, sir.

Q. No recollection whatever?

A. I had nothing to do with the piloting of the ship so I did not take it into consideration but it was practically slack because there is hardly any tide in Baltimore Harbor.

Q. How was the wind?

A. The wind was light northerly, I believe.

Q. What force on the Beaufort scale?

A. About two.

Mr. Wright: Have you a log entry about the wind?

Mr. Farwell: I do not know whether we have the log books. I have a weather report here which is better than any log book entry, which I will show to you.

Mr. Wright: The weather report that Mr. Farwell shows me indicates a total wind movement for the hour between four and five P. M. recorded at the Baltimore bureau of 14 miles an hour from the northwest, and between the hours of five and six P. M., a total wind movement of 9 miles an hour from the north.

[fol. 73] The Witness: Fourteen miles an hour, I should judge.

Q. What force on the Beaufort scale is 9 miles an hour?

A. That is three on the Beaufort scale.

Q. When the El Isleo checked her speed did you observe whether she put her engines astern or merely stopped them?

A. That I could not tell, what they were doing on the other ship, but I know she reduced her speed coming up so that the two ships cleared close together and we hailed one another, both masters did.

Q. You indicated with a gesture a rounding course to starboard?

A. Something like that (indicating).

Q. That is to the El Isleo's starboard?

A. Oh, I don't remember—whether starboard or port. I was standing at the anchor.

Q. Was she at this reduced speed according to your recollection all the time that she was altering her course to starboard, the El Isleo—or was it while she was swinging over to starboard that she appeared to reduce speed?

A. After the collision, then she reduced speed. That I do know.

Q. Well, your previous answer indicated that she reduced speed some time before the collision?

A. The El Isleo?

Q. Yes.

A. No, sir, I don't know what she was doing.

Q. You could not tell what she was doing on her engines?

A. No, sir.

Q. You said she seemed to keep at the same speed for a while?

A. Yes, sir, until the collision was past.

[fol. 74] Q. You could observe her range lights opening up as she swung or weren't you watching closely enough?

A. No, sir, I wasn't watching closely enough.

Q. Can you give us any approximate idea of how much she altered her course before the collision occurred?

A. The El Isleo—well, my approximate idea that it did not alter the course at all. She just kept going up the channel on the ranges.

Q. What do you mean by that gesture like that (indicating) as I observed it, an alteration of course of some four points to starboard?

A. Well, that might have been to starboard or port, I don't remember which, and just after the collision——

Q. Of course, we are not interested much in what happened after the collision since no one was hurt but it was my understanding that you made this gesture (indicating) and then said "Came around and we hit."

A. No, sir.

Mr. Wright: Will you read that answer I refer to, please?

(The Reporter read as follows: "A. That I could not tell what they were doing on the other ship, but I know she reduced her speed and came up so that the two ships cleared close together and we hailed one another, both Masters did.")

Mr. Farwell: Referring to the answer that has just been read the answer of the witness obviously referred to what occurred after the collision because he testified that after the collision they hailed the El Isleo.

[fol. 75] The Witness: Yes, sir, after the collision.

Mr. Wright: Will you please read the question, then, the question previous to that answer and the answer,

(The reporter read as follows: "Q. When the El Isleo checked her speed did you observe whether she put her engines astern or merely stopped them? A. That I could

not tell what they were doing on the other ship but I know she reduced her speed coming up so that the two ships cleared close together and we hailed one another, both Masters did.")

Q. What did the captain talk about when he called you up on the bridge?

A. How to dock the ship at the Standard Oil Dock.

Q. Did you keep a record on the bridge of the bells?

A. The third mate did, sir.

Mr. Wright: May I see that record?

Mr. Farwell: Yes, it is on the first page of this book (handing to Mr. Wright).

Q. When did the third mate sign on, do you know?

A. He was on that ship since the Postal Steamship Company bought her in March a year ago.

Q. Is this a personal book of his (indicating)?

A. That book there (indicating)?

Q. Yes, it has got his name on the top of it.

A. Well, being chief mate on the ship and being I was new on the ship I never saw the book before.

[fol. 76] Q. Will you look at the first page there and tell me whether that appears——

A. That is his handwriting, yes, sir.

Q. Does it appear to you that those entries were made at the time the bells were given or whether they were all copied in there or put in there at some later time all at one sitting?

Mr. Farwell: I object to that as incompetent. The third mate who made the entries is going to be produced as a witness and, obviously, the chief officer, who never saw the book before, is not in position to express any opinion.

The Witness: Pardon me. Furthermore, I had no bosun and no carpenter so I was mighty busy taking care of the windlass and so forth myself, so after the collision—well, I don't know.

Q. You just signed on a couple of days before?

A. On the 17th, in the morning.

Q. And you had not signed on a full crew yet?

A. We had a full crew at that time but the ship had carried no carpenter and no bosun. In fact, at that time I had no carpenter and no bosun.

Q. Where did you sign on the carpenter and bosun?

A. Here in New York about some time later.

Q. Had the ship been laid up before?

A. No, sir.

Q. She had been operating without a carpenter and without a bosun?

A. Yes, sir.

Q. How many men in the crew?

A. Six A. B.'s and two ordinaries according to law.

[fol. 77] Q. And that is all her certificate called for?

A. Yes, sir.

Q. Do you know anything about these entries (indicating)?

A. No, sir, I do not.

Q. Do you know what time the collision occurred?

A. About 5:40 P. M.

Q. I observe in this note-book a great many bells before 5:40. Can you explain them?

Mr. Farwell: I object to that. The testimony of the chief officer is that he was on the forecastle head up until the time the vessel got into Curtis Bay Channel and, obviously, he would not know what bells were sent down to the engine room.

The Witness: No, sir. I know we backed out of the dock and we turned around, completely around, I might say.

Q. And then you got out in Curtis Bay Channel which is a mile and three-quarters long or something like that?

A. Curtis Bay Channel?

Q. Isn't it?

A. About a mile or more.

Q. You had various stop and full astern bells when you were in that straight channel. Can you explain them?

A. Well, I was standing on the fo'castle head and I can't really explain the bells that he gave from the bridge to the engine-room. I can't do that.

Q. Isn't it unusual to be proceeding up a straight channel and have a series of bells? Take, for instance, full astern, 5:16; full ahead, 5:17; full astern, 5:17; full ahead, 5:18; full astern, 5:18.

A. They were swinging the ship around, sir, or trying [fol. 78] to work the ship around without tugs, which was done.

Q. Then, stop, 5:19; slow ahead, 5:20½; stop, 5:20; half ahead, 5:21; stop, 5:24; half ahead, 5:25; stop, 5:27; full ahead, 5:28; full astern, 5:30; full ahead, 5:31; stop, 5:34; full astern, 5:38. Now, those last six or eight bells are bound to be when you are out in the channel, aren't they?

A. Yes, sir, that is right.

Q. Can you explain those?

Mr. Farwell: I object to the question on the ground that the information called for is obviously not within the knowledge of the witness, who had nothing to do with the navigation and who was on the forecastle head.

The Witness: It must have been according to the time but I cannot explain them—not all of them.

Q. Most unusual, wasn't it?

Mr. Farwell: I object to the comment of counsel, that the witness was not there and he does not know whether it was unusual or usual.

The Witness: It was not my duty as chief mate on the ship.

Q. You said you could not explain all of them. Can you explain any of them?

A. I can explain stop, full speed astern, sir, just before the collision.

Q. According to this note-book they were stopped for [fol. 79] a period of four minutes before they were put full astern at 5:38?

A. Well, that must have been the time that we came around—trying to get around before coming around the buoy that the other steamer blew four blasts.

Q. You think the other steamer blew four blasts and then you stopped the engines?

A. Well, shortly afterwards.

Q. Shortly after the four blasts?

A. Shortly afterwards our engines were stopped; as soon as Captain Hudgins blew to pass on the left side—to pass up the channel our engines were stopped then.

Q. That is, the El Isleo blew four blasts and then your Captain answered with four blasts and stopped the engines?

A. Yes, sir.

Q. That is correct?

A. That is correct.

Q. And according to this note-book that stop was at 5:34?

A. Well, now, I did not take the time.

Q. No, but according—that is according to the notebook, this first page of it, there (indicating)?

A. Yes, it must have been, sir.

Q. Were you on the bridge at the time that telegraph was put on "stop"?

A. Yes, sir.

Q. Does your own recollection confirm the times of that "stop" bell along with the "full astern" at 5:34 and 5:38, respectively?

A. Yes, sir.

Q. How long had you been on the bridge when that stop bell was given?

A. Well, I had been a couple—two or three minutes.

Q. When you first came up there the engines were going how?

A. Ahead.

[fol. 80] Q. Had you observed a minute or two before you went up on the bridge that the engines were put "full speed astern" for a period of about a minute as indicated by this note-book?

A. No, sir.

Q. You could not tell that up on the bow?

A. No, sir.

Q. Now, the Eastern Glade sounded a four-blast signal about how long after the El Isleo four-blast signal?

A. Just a few seconds.

Q. So that the El Isleo four-blast signal was just probably a few seconds before 5:34 P. M.?

A. Thereabouts, I think.

Q. And that was about six minutes before the collision if you say it occurred at 5:40?

A. Well, I can't exactly tell the minute when the collision occurred but around 5:40.

Q. So that it would be approximately six minutes between El Isleo's four-blast signal and the collision?

A. It must have been.

Q. In that case, if she was making ten knots, she would travel pretty close to a mile, wouldn't she?

A. If she was making full speed.

Q. Do you think she was making full speed?

A. The El Isleo?

Q. Yes, during that interval of six minutes.

A. That I don't know, sir.

Q. Would you care to estimate what her speed was during that six minute interval?

A. Well, about ten miles per hour.

Q. Statute or nautical miles?

A. Nautical miles, so to speak.

Q. So she would be making about a thousand feet a minute at ten knots?

A. Perhaps.

[fol. 81] Q. And in six minutes she would make six thousand feet which is just about a nautical mile?

A. That is right.

Q. Do you think she was really a mile away from you when she sounded the four-blast signal?

A. Just about, nearly.

Q. Nearly a mile away?

A. I think so.

Q. And you were then approaching buoy No. 2?

A. Yes, sir.

Q. At the time the El Isleo blew that four-blast signal do you recall whether you had passed the black buoy on your starboard hand, No. C-3 on the chart?

A. No, sir. When I came up on the bridge she was crawling along—going along slowly. The ship wasn't going very fast. Our ship wasn't, at the time that he came down.

Q. Were you in the vicinity of nun-buoy No. 4 when you came on the bridge?

A. Yes, sir.

Q. You had not come up abreast of the black buoy, C-3, at the time the El Isleo blew her four blasts?

A. No, sir.

Q. When the El Isleo blew four blasts, didn't she also blow a one-blast signal?

A. Yes, sir, but about a minute and a half later.

Q. Later than what?

A. After she had blown the four blasts, then, about a minute and a half or so later, I know it was quite a time—I think it was kind of a long interval between, she blew one blast and proceeded.

Q. So that according to this note-book her one-blast signal was sounded in the vicinity of 5:35½?

A. Pardon me. After we blew two blasts, that is what I mean.

Q. I am not interested in your first signal just at the moment.

[fol. 82] Mr. Farwell: Well, let the witness correct his testimony, please.

Q. Will you explain what you want to say?

A. After we blew two blasts we waited for her about a minute and a half before she answered our danger signal. That is what I mean. I got it mixed up.

Q. Then, how long was it after her four-blast signal that she sounded the one blast?

A. Just a few seconds, sir.

Q. Would you say about right away?

A. Well, almost right away.

Q. So now you want to put it that the El Isleo's four-blast signal and her one-blast signal were sounded about 5:34 P. M.?

A. Thereabouts, yes, sir.

Q. And at that time your ship was somewhere between can buoys 3 and 5, 5 being opposite nun-buoy 4?

Mr. Farwell: Before the witness answers the question I want the witness to look at the chart and see just what you indicate.

(Witness does as directed.)

The Witness: We had passed here somewhere (indicating) in that neighborhood when we blew the first two blasts, or somewhere around here.

Mr. Farwell: Indicating the first two blasts as between C-5 and C-3.

The Witness: In that neighborhood, yes.

Q. And you had not yet passed C-3 at the time the El [fol. 83] Isleo blew her danger signal and one blast?

A. I did not really see that buoy myself. I don't know whether we passed it or not, in the dark.

Q. And you were not clear past nun-buoy No. 4?

A. No, sir.

Q. And nun-buoy No. 2 was still well up ahead on your port bow?

Mr. Farwell: At what time are you speaking of?

Mr. Wright: At the time the El Isleo's four blasts and one blast.

Q. My question has to do with your position with reference to buoy N-2 at the time the El Isleo's one-blast signal?

Mr Farwell: One blast?

Mr. Wright: Well, that followed right after the four blast. I can shorten it by saying one blast instead of saying four blasts and one.

The Witness: We must have been there, somewhere (indicating).

Q. About abreast of C-3 indicated on that chart?

A. About nun-C.

Q. And you must have been about abreast?

A. Yes.

Q. And at the time of the two-blast signal about where was El Isleo?

A. She must have been around here, somewhere (indicating).

Q. I will put a little mark there. Is that what you indicate (indicating)?

A. Just about on the range coming up about here somewhere (indicating). Or she might have been down here [fol. 84] (indicating), about three or four points.

Q. In other words, you could not tell whether she was right on the range or not?

A. I could not tell exactly but it seemed that she was headed right straight up on the range.

Q. I will put a little mark there where you first indicated and I will put a mark about——

Mr. Farwell: No, let the witness indicate, please on the chart.

Mr. Wright: All right.

The Witness: We must have been in that neighborhood somewhere around there (indicating).

By Mr. Farwell:

Q. Before you go further, at what time was that, Mr. Johanson?

A. That was when we got our first signal.

By Mr. Wright:

Q. Wasn't I very specific in asking you for the positions at the time of El Isleo's one blast signal?

A. You were.

Q. And haven't you indicated on the chart the positions of the two vessels at the time of El Isleo's one blast signal?

Mr. Farwell: I object. The witness specifically stated that the two marks that he made was when the Eastern Glade blew the two whistle signal.

[fol. 85] Mr. Wright: The purpose of that objection is quite evident.

Mr. Farwell: Yes, to keep the record clear.

Mr. Wright: I object to those kind of objections.

Q. Now, you have indicated two positions, that is, the positions of the two vessels?

A. Yes, sir.

Q. I ask you to indicate the positions of those vessels at the time the El Isleo blew the one blast signal. Do these positions indicate that?

A. Well, I was not piloting the ship and to the best—that is the way I saw it.

Q. That is your best estimate of the positions of the two vessels at the time of El Isleo's one blast signal?

A. They were there about somewhere but she might have been further down yet.

By Mr. Farwell:

Q. At what time?

A. At the time we blew the first blast.

By Mr. Wright:

Q. At the time you blew the first blast she might have been further down the channel?

A. She might have been further down the channel.

Q. But, Mr. Johanson, at the moment we are only considering the positions at the time of El Isleo's one blast signal. Now, I want you to forget all about signals that [fol. 86] preceded that blast because we can take them up later. At the moment we only want to make certain that the positions you have indicated on the chart at my request indicate their positions at the time of El Isleo's one blast signal.

Mr. Farwell: Now, Mr. Wright, I don't think——

Mr. Wright: That is a perfectly plain question.

Mr. Farwell: I object to your question. The witness has repeatedly stated that the marks that he put on the

chart indicate the positions of the vessel at the time the Eastern Glade blew the first two-whistle signal. Now then, if you want to have him make other marks on the chart, that is all right, but the witness has already stated that those two marks indicate the position of the vessels at the time the Eastern Glade blew her first two whistles.

Mr. Wright: The witness has stated that those positions indicated the time of the one blast signal by El Isleo and I want to go back to that.

Q. Now, Mr. Johanson, notwithstanding this lengthy statement by Mr. Farwell, am I not correct that you intended to answer my question as to their positions at the time of the El Isleo's one blast signal by putting those marks on the chart?

Mr. Farwell: I object. I think the question is misleading. [fol. 87] It is highly misleading. The witness obviously doesn't understand you.

Mr. Wright: He understands it perfectly. Don't you, Mr. Johanson?

The witness: Well, the best I can remember it.

Q. The best you can remember what?

A. Well, the way it happened.

Q. As best you can remember it what do those positions indicate?

A. The position of the two ships.

Q. At the time of El Isleo's one blast——

Mr. Farwell: No. I object. At what time?

Mr. Wright: At the time of El Isleo's one blast signal. A little more of this and I shall withdraw from the examination of this witness.

Mr. Farwell: Well, you can suit yourself about that.

The Witness: All right. She blew one blast.

Q. That is just what I asked, wasn't it?

A. Well?

Q. Indicating——

Mr. Farwell: Wait a minute. The witness has not answered the question. Just a minute. The witness has not answered. He just has his finger on the chart. He is studying the chart. Give him a chance to figure the thing out.

[fol. 88] The Witness: Well, she blew four blasts first.

Q. Yes.

A. Then she proceeded.

Q. Yes.

A. So it was only a very short interval, ten or fifteen seconds later, that she blew one and she proceeded.

Q. Yes. Now, will you put your finger on the chart to indicate her approximate position at the time she blew the one blast?

A. Well, my approximate position should be in that neighborhood (indicating).

Q. That is the straight mark that I originally placed there?

A. Well, say half a ship length ahead of this (indicating).

Q. Half a ship length ahead of that form that you drew?

A. Yes, sir.

Q. If I may I shall just make clear the form that you drew and then we will understand what you mean as to her position when she blew one. It would be half a length further up. Suppose I put a one there. That is where she blew her first blast?

A. Approximately.

Q. Now, will you put your finger on the chart to show your approximate position at the time of that one blast signal?

A. About half a length ahead of that, swinging to the left.

Q. About half a ship length ahead of this shape that you have previously drawn?

A. Yes.

Q. I will make that shape a little firmer. Would this indicate the one blast position, then (indicating)?

A. The one blast of the El Isleo?

Q. Yes.

A. Just about.

[fol. 89] Q. I will draw a line from that position to read "Position at time of El Isleo's one blast signal." I will draw a line out from the "1" and I write "half a ship length ahead of El Isleo's position when she sounded one blast."

Mr. Wright: I will offer this chart in evidence.

(Chart referred to received in evidence and marked, "El Isleo's Exhibit 1," of this date.)

Q. And the two shapes that we have drawn here, I take it, indicate the positions of the two vessels at the time of El Isleo's four blast signal?

Mr. Farwell: I object to that. You are misstating the witness' evidence.

Q. If I am wrong, please correct me. That is what I understood from your testimony.

A. Well, the El Isleo, she was, as I said before, approximately half a ship length astern of that.

Q. Astern of the word "one"?

A. When she blew four.

Q. I will ask you this, then. As these two ships now appear, what do they indicate?

A. The shapes?

Q. As of what time?

A. Well, I did not take the time.

Q. No, no, as of what time with reference to the whistle signals?

A. When we had just blown two and he had answered four, we were proceeding after he blew one blast.

[fol. 90] Q. Those two shapes, then, indicate the positions of the two vessels as of about the time you blew two blasts and he answered with four?

A. Well, the first position—these shapes?

Q. The shapes, yes, that is what they indicate?

A. Approximately.

Q. Would you say that this shape in the Curtis Bay Channel indicates the position of the Eastern Glade about the time she blew two and you got a reply of four blasts?

A. That is the approximate position, sir.

Mr. Wright: I will draw a line out from that and write "Eastern Glade when she blew two and received reply of four blasts."

I will also draw a line out from the shape indicating El Isleo.

Mr. Farwell: At the time they blew two blasts and got the reply.

Mr. Wright: And write position when "E. S."——

Mr. Farwell: Wait a minute. When the Eastern Glade blew two blasts.

Mr. Wright: all right. I will write out "Eastern Glade" (writing "When Eastern Glade blew two blasts and El Isleo answered with four blasts.")

Q. On those headings the vessels were on crossing courses, weren't they?

Mr. Farwell: I object to it on the ground that that is a question of law for the court to answer.

[fol. 91] Mr. Wright: The witness has already nodded his head.

The Witness: I did not mean anything by that. We did not intend to cross his bow. Of course, I was not doing the piloting but I know that Captain Hudgins did not intend to cross his bow.

Mr. Wright: I move to strike that out as not within the knowledge of this witness and not responsive to the question.

Q. Can you tell on which side of this flashing red buoy, 8-N, El Isleo passed?

A. Well, the El Isleo, according to all indications, was in the Fort McHenry Channel.

Q. That would leave the buoy on her starboard hand?

A. Yes, sir.

Q. You could not tell how close she passed?

A. No, sir.

Q. Wasn't it in the vicinity of that buoy that she was altering her course to starboard, the El Isleo?

A. Well, I don't know when she altered her course to starboard.

Q. At the moment of collision could you tell toward what point in the land El Isleo was headed?

A. Just about straight up Fort McHenry Channel, sir.

Q. I mean right at the moment of impact and I am assuming that she altered her course somewhat to starboard before that?

Mr. Farwell: Mr. Wright, the witness has repeatedly testified that the alteration of the course of the El Isleo to starboard or to port was after the collision.

[fol. 92] Q. Do you know whether they had any trouble steering the Eastern Glade?

A. No, sir, I do not think they had any trouble steering the ship.

Mr. Wright: I move to strike out all of the witness' answer except "No, sir," the balance being not responsive.

Q. In the absence of some explanation for all these bells coming down the channel, isn't it fair to assume that she was having trouble?

A. No, sir. It was dark coming down the channel and I know at times we were going mighty slow anyway to pick up the buoys to navigate the ship between those buoys because they were not lighted, that is, in the Curtis Bay Channel.

Q. Can you estimate Eastern Glade's speed over the ground at the time she stopped her engines which is indicated in the note-book as 5:34 and which you have indicated was about the time of the Eastern Glade's four-blast signal?

A. Well, that is a little hard question to answer. I should say I don't know. I could not give you a correct answer.

Q. Probably better than we could.

A. No. I should say about three or four miles per hour, something like that.

Q. Is that nautical miles?

A. All nautical miles, yes.

Q. At that speed, three or four miles over the ground, she could check her headway rather quickly, couldn't she?

A. Not very quickly, being a light ship. You see, her propeller was out of the water even with the hub.

[fol. 93] Q. The hub of the propeller was right at the water line?

A. Just about, yes.

Q. The bow was well up?

A. Her draft, I think, was approximately six feet forward—six to seven feet, thereabouts.

Q. So her bow was high up out of the water?

A. Yes.

Q. And can you give us any estimate of how far ahead she had traveled before you had all her way off under those conditions?

Mr. Farwell: Doing what with the engines?

Mr. Wright: Full astern.

A. Well, some ships take—well, a light ship, and so forth, I can't give you a correct answer but it would take up to three or four minutes, I should judge, to get the headway off her.

Q. How many lengths would she travel ahead after her engines were put full astern under those conditions?

A. Well, I have never experienced that on that ship.

Q. Can you give us an approximation?

A. Well, I should say maybe, a little ship, four or five ship lengths.

Q. And she is about four hundred feet long?

A. Yes, four hundred feet long.

Q. That means that she would travel ahead a distance of a quarter of a mile or better with her engines going full speed astern?

A. Well, the answers I have given are only approximate, in my judgment.

Q. Well, do you think that is correct, if she is only mak- [fol. 94] ing three or four miles and you put your engines full speed astern she will still forge ahead for over a quarter of a mile?

A. No, not that far.

Mr. Farwell: I call Mr. Wright's attention to the fact that there are 1500 feet in a quarter of a mile and three or four lengths from 1200 to 1600 feet which is a little bit on the far side in saying a quarter of a mile.

Mr. Wright: I will say I understood the witness to say three or four lengths—four or five lengths.

Mr. Farwell: I thought he said three or four lengths.

Q. Lawyers are very unreliable that way, so do you recall whether you said four or five or three or four, and whichever you said which is your best estimate?

A. Well, from three to five. Now, you can take either of them.

Q. Isn't it possible that she could come to a stop within even less than three minutes by going full astern?

A. The Eastern Glade?

Q. Yes.

A. Well, it might be possible.

Q. Don't you think that if the Eastern Glade had put her engines full speed astern at the time of this stop bell, 5:34, it would have taken off all her way before emerging from Curtis Bay Channel?

A. That I don't know, sir.

Q. It is entirely possible, isn't it? The way this position looks, I figure this to be about a little over 800 feet from this buoy up to a point abreast of N-2, a little over 800 feet.

[fol. 95] A. Well, where is the quarter of a mile, then? 1200 feet, then, would be up here, wouldn't it (indicating)?

Mr. Wright: Read the answer, please.

(Answer read.)

Mr. Wright: Yes. You want a distance of 1200 feet. That would be 400 yards. That is where 1200 feet brings you to (indicating). I will put a dot up there where I have measured 1200 feet from the bow of the ship, indicating Eastern Glade.

Now, I will ask you whether you think that had the Eastern Glade's engines been put full astern upon receiving the El Isleo's four-blast signal it would have stopped within the distance between the bow of that ship and the point indicating a distance of 1200 feet ahead of the Eastern Glade.

A. Well, she should have stopped—she might have stopped.

Q. Now, when the Master called you up on the bridge who did you leave on the fo'castle head?

A. I left one of the sailors, Manuel, he was on the lookout. Manuel Batata, something like that.

Q. Did you observe the lights of the El Isleo before you left the fo'castle head?

A. No, sir.

Q. Did you hear any remark from the lookout of the El Isleo's lights at any time?

A. After I came on the bridge I remember he reported the ship.

Q. How did he report her?

A. Well, he usually struck a bell, but I don't remember. [fol. 96] I was talking to the Captain. I heard the Captain answer, "All right."

Q. That is after you came on the bridge?

A. Shortly after I came on the bridge.

Q. That is before any whistle signals were sounded?

A. Yes, sir.

Q. You had not observed the El Isleo before that report from the lookout?

A. Yes, as I came up on the bridge I saw the El Isleo. I went up on the starboard side of the bridge and I saw her on the starboard bow.

Q. And that was before the lookout reported her?

A. Yes, sir.

Q. How long before?

A. Oh, I should say half a minute, something like that.

Q. When the Captain said all right, did you sound any whistle signals or do anything with the engines?

A. Not then, sir. Not just at that moment, to my recollection.

Q. What did he do next after that report from the lookout?

A. He blew two blasts.

Q. How long after the report?

A. I should say half a minute or a minute, something like that. I did not take the time. Then, he ordered the helm to left.

Q. What orders do you use on the Eastern Glade, direct or indirect?

A. Right and left, sir.

Q. When did they start using that?

A. Well, they had it on that ship when I joined the ship. There is a sign in the wheelhouse saying right and left so that the wheelman can see it.

Q. Is the order given "starboard rudder" or "starboard wheel" or "turn wheel to starboard," or is it given "right"?

[fol. 97] A. It is given right and left. That indicates left rudder. Turn wheel to the left the rudder goes to the right. Turn to the right it goes to the left.

Q. I think you used the expression "left helm"?

A. Not "helm" no. Left your wheel and right your wheel.

Q. I mean in one of your previous answers, didn't you use the expression "left helm"?

A. If I did I did not mean it because the helm is opposite, as a rule, to the rudder.

Q. You did not use it?

A. No, sir, I never did.

Q. You do not think you ever used the expression "left helm"?

A. No, sir.

Q. It is sometimes difficult to turn a light ship against the wind, isn't it?

A. Well, any ship, as a rule, turns faster into the wind than off the wind—away from the wind. That is the height

of the ship. That is a known fact. Every ship I have been on, even sailing ships.

Q. And even though her bow is pretty well out of water you can turn that bow up against the wind easier than you can turn it away from the wind?

A. Yes, sir. I have had that experience on nearly every ship I have been on.

Q. Isn't it a fact that you passed at least one hundred feet off buoy 7-M?

A. No, not that far off. We were pretty close to that buoy when we passed it.

Q. Eastern Glade has a right hand propeller?

A. Yes, sir, as far as I know.

Q. How long before the collision do you think it was that she reversed her engines?

A. I should say about two minutes.

Q. Prior to that they had been stopped for several minutes?

A. Yes, sir.

[fol. 98] Q. So that the ship would not have had a great deal of headway?

A. No, she would not have had much headway.

Q. She backs to port?

A. Yes, the port quarter.

Q. With the ship having very little headway and you putting the engines full speed astern, why did you fall off to starboard?

A. She usually does after she has been backing a little while.

Q. And it all depends on how fast she has been going as to how soon she will start swinging?

A. Yes, sir.

Q. And that is, if she is going full ahead, it will take a full minute or so for her to start falling off?

A. That is right.

Q. And if her engines have been stopped for a few minutes her bow will start falling off very quickly after the engines are put full astern?

A. Under the ordinary circumstances, but a light ship, a ship being light and the propellor out of water even with the hub——

Q. Wouldn't that swing her that much faster drawing very little water?

A. No, the propeller hasn't got the power to get the ship started.

Q. But it will swing a little faster with the propeller partly out of water?

A. Well, I don't know. She turns practically the same amount of revolutions.

Q. I am speaking of the swinging of the ship. With the propeller partly out of water and the bow just a little in the water, wouldn't she swing around faster than if she were deep laden?

A. Some ships do and some ships don't.

Q. How about the Eastern Glade, do you know?

A. I notice she—the Eastern Glade, was not very easy to [fol. 99] handle when she was light like that. The propeller did not seem to have the grip or power. In fact, any light ship is the same way.

Q. Well, you think she was backing for a period of about two minutes before the collision?

A. Yes.

Q. Well, in that length of time the bow would fall off to starboard how many points, would you think?

A. Well——

Mr. Farwell: Are you speaking of this particular occasion?

Mr. Wright: Yes.

Mr. Farwell: Then ask him how much the bow did swing.

Mr. Wright: I will ask my own questions.

The Witness: I did not notice the bow swing anything to speak of. It might have swung—it started swinging. How much it swung I don't know, sir.

Q. It may have been as much as two or three points?

A. No, sir, not that.

Q. You don't think that it would be as much as two points?

A. Not that much even.

Q. What is your best estimate of the amount it did swing?

A. I would not say more than about a point. No more than that.

Q. She still had headway at the time of the collision?

A. That I can't tell exactly.

Q. Where were you at the time of the collision?

A. Just getting on the ladder on the port side of the bridge.

[fol. 100] Q. Facing forward or aft?

A. I was going forward but I was ordered by the Captain to go back to the fo'castle head and stand by the anchor.

Q. You were not loitering?

A. No, sir, I obeyed my orders.

Q. And you were on your way up there as quickly as you could get there?

A. Yes, sir.

Q. Were you watching the El Isleo?

A. I did watch her as I came down on the side of the house. I was on the starboard side.

Q. When you left the bridge you saw there was danger of a collision?

A. Yes.

Q. Were the engines put astern before you left the bridge?

A. Yes, sir, full speed astern.

Q. Was the El Isleo in view all the time from the time you started to go forward until the collision?

A. I could not answer because she slid along right up ahead of us, and the fo-castle head, you see, I could not see on account of that because I was down below in the well deck, you know, running up forward.

Q. So your own bow shut the El Isleo out from your view?

A. Yes.

Q. When you got down in the well deck, not before that?

A. No, sir.

Q. When you would be running forward there from the bridge you would never look aft, would you?

A. No, sir, I was on my way up to my station.

Q. After the collision you proceeded direct to the forecastle head?

A. Yes, sir, I went up there as fast as I could.

Q. Both ships still moving?

A. We were—I could not say whether we were moving [fol. 101] then or not.

Q. You observed what damage was done on the El Isleo?

A. No, sir, I could not do that. She was away ahead of us then.

Q. You were not looking aft right away when you arrived at the forecastle head?

A. Well, I took a look around, naturally, the same as I always do.

Q. For what purpose?

A. I always keep a look all around, take a glance all around. That is customary with old sailors.

Q. Did you make a note of your position at the time of the collision?

A. No, sir.

Q. Were you looking around to observe where you were?

A. Well, as the El Isleo struck us, struck our bow it gave us an awful push to the left. It seemed very peculiar to me. The bow swung around four points.

Q. Your bow swung about four points immediately after the collision?

A. Yes, sir. It was a very peculiar thing. I never seen a collision, as far as that goes, but we got an awful blow.

Q. And that is because your bow was light?

A. That is what I say.

Q. It was buffeted right around?

A. Yes.

Q. The El Isleo was loaded, wasn't she, or partly loaded?

A. Partly loaded.

Q. A pretty heavy ship for a light ship to come up against?

A. Yes, it was.

Q. It really isn't to be wondered at that you swung around?

A. No, but I was surprised at that.

Q. And that swing was immediately after the collision? [fol. 102] A. Yes, we went up this way, we got the blow and we went over that way.

Q. Then you kept looking around when she swung and you saw the Fort McHenry ranges?

A. Yes, sir.

Q. About ahead?

A. No, a little bit on the starboard side.

Q. How many degrees?

A. A couple of degrees or so, maybe more—maybe two or three degrees.

Q. And that was right after she swung?

A. Yes, after she swung, when I got up on the fo-castle head.

Q. Did you make any notation in the log about this?

A. No, sir, I did not. The third mate did, I understand, because he was on the bridge at the time.

Mr. Wright: May I see the deck log?

Mr. Farwell: I have not got the deck log because I was going to produce that with the Captain and the third mate. I have the bell book.

Q. Did you sign the deck log?

A. The smooth log, yes, sir, we kept one on hand.

Mr. Wright: You haven't even got the smooth log here?

Mr. Farwell: I have the book of original entries.

Mr. Wright: Do you maintain that this note-book we looked at was a book of original entry?

Mr. Farwell: That is what I am informed. That is the [fol. 103] third mate's notebook.

Q. The Fort McHenry ranges are two flashing lights, aren't they?

A. Occulting, I understand, red and green.

Q. You understand that from your observation or from the chart?

A. Well, from my observation and from the chart both, I should think, but you see that red light, that was put there lately.

Q. That is the rear light?

A. Yes, that is the bottom P-3, Locust Point, and the green light.

Q. That is Fort McHenry?

A. We used it, that was some years ago, and they changed it to a red light and established a red one behind it.

Q. And after you got up on the forecastle head and the ship had swung about four points to port you observed those two range lights, two or three degrees on your starboard bow?

A. Yes, sir. I now believe that we did not cross, according to the ranges.

Q. Did you take a careful enough observation to determine whether those range lights were in line or open one way or the other?

A. They were open. The green light was to the right.

Q. How long after the collision do you think it was that you observed that?

A. Well, I should say about three or four minutes, something like that.

Q. Do you know how the Eastern Glade's helm and engines had been maneuvering in that period of three or four minutes?

A. No, sir, I do not.

[fol. 104] Mr. Wright: I am sorry we haven't the log book and it may be that I should wish to ask the witness a few more questions after citing the logs. I think I should reserve the right to do that.

Q. Can you remember the next day when you smacked the Pennsylvania Pier?

A. I was standing by the fo'castle head—you mean the Standard Oil Dock?

Q. Right, and let go anchors?

A. Yes, sir.

Mr. Farwell: I object to any interrogation of any witness about what happened in some other case.

The Witness: I don't know what happened.

Mr. Farwell: The witness is not being examined in that case. If you want to call him as a witness in any claim that the Pennsylvania Railroad may have you may call him.

Mr. Wright: It is not my purpose to fight the Pennsylvania Railroad's battles in Baltimore. I should only like to find out whether this witness knows of anything being wrong with the steering gear or engine at the time of this collision with the pier.

Mr. Farwell: I object to it. That is immaterial. It has nothing to do with this case and I direct the witness not to answer if the question is put.

Mr. Wright: You direct him not to answer any questions [fol. 105] with reference to their subsequent answer?

Mr. Farwell: I will make my decision if the question is put.

Q. And the next day when you collided with the Pennsylvania pier, or perhaps it was two piers, you were not going away from those two piers. You had sailed from some pier further up the river?

Mr. Farwell: Mr. Johanson, I direct you not to answer.

The Witness: All right, sir.

Q. How far is the Standard Oil dock from the Pennsylvania Railroad dock that you hit?

Mr. Farwell: I direct you not to answer.

The Witness: I can't answer, sir.

Q. Was there anything wrong with the steering gear at the time of this collision with the Pennsylvania pier?

Mr. Farwell: I direct you not to answer.

Q. Were any repairs made to your steering gears or engines after these collisions?

Mr. Farwell: After which collision?

Mr. Wright: In the latter part of December.

[fol. 106] Mr. Farwell: I object to the question on the ground that it is too indefinite.

Mr. Wright: He hasn't asked you not to answer that.

Mr. Farwell: And I instruct the witness not to answer unless the question is put in more precise form.

Q. Were any repairs made to your steering engine, steering gear, telegraph, between December 19th and December 31, 1935?

Mr. Farwell: Now, you may answer the question if it is confined to repairs as a result of the El Isleo collision if you know.

A. As to the El Isleo collision, I have no knowledge of any repairs to the steering gear or steering engine.

Q. Have you any knowledge of any repairs to the steering gear?

A. No repairs that I have any knowledge of, no, sir.

Q. What kind of a steering gear has she?

A. She has a chain and rod.

Q. Steam?

A. Yes, sir, and back of the poop is the quadrant and the hand gear.

Q. You have no telemotor?

A. No, sir.

Q. Had you tested out the steering gear before you left the dock?

A. The third mate always does.

Q. You did not yourself?

A. No, sir, that is the third mate's duty.

Q. You were not present when it was tested out in this case?

A. No, sir.

Q. You have no personal knowledge whether it was tested [fol. 107] or not?

A. I know it was tested. The third mate told me that everything was all right.

Mr. Wright: I move to strike out the answer as not responsive.

Q. Was anything wrong with El Isleo's lights?

A. No, sir, I could not see anything wrong.

Q. Was it a good loud whistle?

A. Yes, pretty good whistle, sir.

Q. You can turn a ship easier going full speed than you can if you stop?

A. Absolutely. If a ship stops it is dead.

Q. If you make a turn in the channel and blow two blasts to another ship that you are going to turn and she is on your starboard bow, you keep your engines going full speed ahead in that maneuver?

Mr. Farwell: I object to it as immaterial and irrelevant.

The Witness: Shall I answer, sir?

Q. You may answer, yes.

A. It was not necessary to have full speed ahead.

Q. You would not have the engines stop?

A. If the ship had headway then you can navigate the ship, that is, swing it, yes, sir.

Q. But if you want to swing ahead of another ship you want to get out of there as quickly as possible?

A. Yes, sir.

Q. You could not do that with the engines stopped?

A. No, sir.

Q. You would expect then in this situation or under those [fol. 108] circumstances to be going full speed ahead?

A. Depends on the circumstances.

Q. Well, here it appears that the engines were stopped when you blew two blasts and the engines are stopped for a period of four minutes. You are going to be awfully slow about getting around that turn, aren't you?

A. As it appeared to me Captain Hudgins was trying to hug the buoy on the left side of the channel.

Q. And it looked as though she was just going ahead continuing on past?

A. It seemed that way.

Q. And he intended, as you saw it, to turn and proceed up Fort McHenry Channel ahead of the other ship?

A. It seemed to me that he figured there was room for two ships, which there was, or should be.

Q. Would he turn into the channel and proceed up Fort

McHenry Channel ahead of the other ship or abreast of it or astern of her?

A. Well, I don't know what his intentions were, but it seemed to me that he was hugging the channel on the left side, also at the same time giving the other ship, the El Isleo, a chance to come up on the range on the right hand side of the channel.

Q. Would that mean that the Eastern Glade would come on and proceed up the channel about abreast of the other ship?

A. Well, at the speed that both ships were going the El Isleo would have overtaken the Eastern Glade and passed clear.

Q. After Eastern Glade got in Fort McHenry Channel?

A. I should think so, if they could have gotten clear. There was room enough.

[fol. 109] Q. If the Eastern Glade went up on her own port side of the channel and the El Isleo went up on her starboard side of the channel there would have been room enough?

A. Yes, there would have been room enough.

Q. Did it appear to you that Captain Hudgins was aiming to come into Fort McHenry Channel about the time the El Isleo would be off the mouth of Curtis Bay Channel?

A. Well, we kept swinging to the left and as we kept swinging to the left she was almost about our beam.

Q. It turned, then, into an overtaking situation?

A. No, I did not say it was an overtaking situation. It would have been.

Q. It would have been if you had gone through ahead and gotten up so that the other ship was abaft your beam?

A. It would have been that way, yes.

Q. Was it your impression that Captain Hudgins wished to make it an overtaking situation?

Mr. Farwell: I object to the question.

A. No.

Q. Ordinarily when you are maneuvering around in a harbor with a very light ship, haven't even got fuel oil abroad, you have a couple of men on the bow ready to let go anchors, don't you?

A. Yes, sir.

Q. You would have remained on the forecastle head ready to let go anchors except for the fact that the Captain called you up to the bridge?

A. Yes, sir.

Q. Do you think if you had a bosun or a carpenter up there you could have had them let go the anchors in time to check your headway?

[fol. 110] A. They would not have helped the situation any.

Q. You think if you had let go your anchors a couple of minutes before this collision occurred it would not have helped the situation any?

A. It might have helped if the anchors had been let go.

Q. That is not the usual way to stop a ship, is it?

A. No, that is right.

Q. It is very effective when you do it?

A. Absolutely. That is what the anchors are there for.

Q. Was this man up there on the forecastle head capable of letting go the anchors?

A. Yes, sir, a very good man.

Q. He could do it alone?

A. Yes.

Q. Did you hear any orders given to let go anchors?

A. No, sir.

Q. You weren't given any orders?

A. No, sir.

Q. You think if you had been on the bridge you would have ordered the anchors let go?

Mr. Farwell: I object to it.

Q. Given orders—if you had been doing the piloting?

Mr. Farwell: I object to it on the ground that the man was not doing the piloting.

Q. What do you think of that, Mr. Johanson, if you had been doing the piloting, do you think you would have ordered the anchors let go?

A. Maybe I would and maybe I wouldn't.

Mr. Wright: That is all.

[fol. 111] Re-direct examination.

By Mr. Farwell:

Q. Mr. Johanson, look at this chart, El Isleo Exhibit No. 1—will you come over here, please? You have indicated

the position of the El Isleo when she blew the one-whistle signal?

A. Yes, sir.

Q. And that is according to my measurements more than 900 yards from buoy 7-M. You said the collision occurred within a hundred feet of buoy 7-M?

Mr. Wright: I object to it.

Q. Well, did you say one hundred feet of buoy——

A. I said we were one hundred feet past that buoy.

Q. If the El Isleo had reversed her engines at the time she blew her four-whistle signal and if she had reversed her engines at the time she blew her one-whistle signal could not she have averted the collision?

Mr. Wright: I object to it as incompetent, irrelevant and immaterial.

A. Yes, sir, she could.

Q. And if the El Isleo had reversed her engines at that time you say there would have been no collision?

A. I do not think there would have been any collision.

Q. Was the collision caused by the fact that the El Isleo kept on going?

A. That is what I think.

Mr. Wright: I object to it.

Mr. Farwell: That is all.

[fol. 112] Re-cross examination.

By Mr. Wright:

Q. You know it is the duty of the privileged vessels in a starboard hand situation to keep her course and speed?

A. I know that.

Q. Was the El Isleo the privileged vessel here in a starboard hand situation?

Mr. Farwell: I object on the ground that that is a question for the court to decide.

Mr. Wright: This man is a master mariner. I am entitled to have information on that.

Mr. Farwell: Then, I warn you that if you make him an expert you are making him your own witness.

Mr. Wright: Nothing of the kind. I am merely cross examining him.

The Witness: Pardon me. Most of the time we have disregarded the rules and regulations in order to avoid accidents.

Mr. Wright: Just a minute, Mr. Johanson.

Q. At the time, do you know which navigation rule applied to this situation when the vessels were being navigated with reference to each other?

Mr. Farwell: I object to it on the ground that that is a question for the Court to decide.

Mr. Wright: I am asking him for yes or no. He can say yes or no.

[fol. 113] Q. Do you know, Mr. Johanson, which navigation rule applied?

A. I know the rules of the road.

Q. Which rule of the road applied or do you know which rule applied?

A. Well, it says in the rules that a steam vessel, that is, any steam vessel having another steam vessel on the starboard side or starboard bow shall keep clear of the other.

Q. Is that the rule that applied here?

Mr. Farwell: I object to that.

Q. There is another part of the same rule, isn't there, Mr. Johanson saying that the vessel in that situation which has the other on her port bow shall keep her course and speed, isn't that so?

A. That is right enough but then again there is another clause in the law that says——

Q. That is all I want to know. That is the article that you say applied to this situation. That is all.

A. Yes.

Re-direct examination.

By Mr. Farwell:

Q. Mr. Johanson, was your course crossing that of the El Isleo or was your course to go up on the port side of the channel?

Mr. Wright: I object to it as leading.

A. On the port side of the channel, sir.

Q. Were you intending to cross channel to go over in front of the El Isleo?

Mr. Wright: I object to that. This man wasn't piloting. He said he does not know what the Captain had in mind.

[fol. 114] A. No.

Q. If the course of the two vessels are not crossing does the crossing rule apply?

A. No, sir.

Q. Haven't you got a special situation rule that you should take precautions to avoid collisions when there is danger of collision?

A. Well, divert from all the rules and regulations in order to avoid collisions.

Q. Do you know what a crossing signal is?

A. Supposed to blow one and you blow two.

Q. Suppose one vessel blows two and you blow one?

A. That is a crossing signal.

Mr. Farwell: That is all.

By Mr. Wright:

Q. Will you indicate on this chart the place or berth from which the Eastern Glade sailed?

A. We came around this buoy here—it is right in here (indicating).

Q. Let us put a cross mark there?

A. We backed out of here.

Q. You backed out of this narrow channel?

A. That is right.

Q. And around here (indicating) and then you came ahead?

A. Yes, sir, and at the time we got up here it was dark, you see. We had quite a job picking up these buoys in the dark.

Q. Do you know what time it was when you entered the buoyed Curtis Bay Channel?

A. No, sir, I don't know what time that was.

Mr. Wright: That is all.

Mr. Farwell: That is all.

[fol. 115] MANUEL BATATA, called as a witness on behalf of the Libellant, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Farwell:

Q. You were an A. B. seaman on board the Eastern Glade?

A. Yes, sir.

Q. Do you remember the collision with the El Isleo?

A. Yes, sir.

Q. That happened December 19th?

A. Yes, sir.

Q. You are an A. B. seaman?

A. Yes, sir, an able seaman.

Q. You hold a lifeboat ticket?

A. Yes, sir.

Q. When the Eastern Glade left the pier were you up on the forecastle?

A. Yes, sir.

Q. Did you remain on the forecastle?

A. Yes, I stayed on the forecastle.

Q. Up until the time of the collision?

A. Yes, sir.

Q. What were you doing there?

A. I was the lookout.

Q. Do you remember coming out of the dock and then you went around some points of land and then finally got into the straight channel?

A. Yes, I remember that, yes.

Q. After you got into the straight channel did you see the lights of any other vessel?

A. Yes, I saw two lights and the red light of the vessel.

Q. What color were the two lights?

A. A white light.

Q. And did you report those lights to the bridge?

A. Yes, I reported them.

[fol. 116] Q. How did they bear from you?

A. About three or four points.

Q. On what bow?

A. On the starboard bow.

Q. How did you proceed?

A. I told him of the light on the starboard bow, that it was about three or four points off the starboard bow.

Q. Did you call out or ring the bell?

A. I reported by mouth.

Q. After you reported the lights, did you hear any whistles blown?

A. I heard two whistles.

Q. From what ship?

A. From my ship, the Eastern Glade.

Q. Then, did you hear any more whistles?

A. I heard four whistles about one minute before the collision.

Q. Which vessel blew four whistles?

A. Four short whistles.

Q. Which vessels blew them, your ship?

A. My ship.

Q. Did you hear any whistles from the other ship?

A. Yes, I heard four whistles.

Q. You heard whistles from the other ship?

A. Yes.

Q. Did you see a flashing white buoy?

A. Yes, I saw it on the port side.

Q. Was your ship when you heard the four whistles on a steady course or was she swinging?

A. She was swinging like that (indicating).

Q. Swinging towards what?

A. To the port side.

Q. Did you stay on the forecastle head until the collision?

A. Yes, sir.

Q. What were you doing when the collision occurred?

[fol. 117] A. When I saw the ship—I saw the ship and it came to my ship, the other ship and I got on the port side and I grabbed hold of the windlass.

Q. You were holding on to the windlass at the time of the collision?

A. Yes, sir.

Q. Did you see the white buoy when you were holding on to the windlass?

A. Yes, I saw the white buoy.

Q. Where was that?

A. It was about amidships, abeam.

Q. On what side?

A. The port side.

Q. How far away?

A. It was about fifty feet.

Q. Did you notice any range lights of the channel?

A. Yes, I saw the red light on the other side of the channel.

Q. And that was a flashing buoy?

A. And I saw the flashing buoy on the port side and the red light on the other side of the channel.

Q. The red light that you saw was on the other side of the channel?

A. On the other side of the channel.

Q. And that was a buoy?

A. That was a buoy, I guess. I think it is a buoy.

Q. Did the other ship appear to slow down as she approached you?

A. No, that ship came very fast, you know.

Mr. Farwell: That is all.

Cross-examination.

By Mr. Wright:

Q. Are you familiar with the chart of the Harbor of Baltimore?

A. No, I do not know about the Harbor of Baltimore because I have just been two times over there.

[fol 118] Q. And this was only your second time to Baltimore?

A. Yes.

Q. So you had never studied the charts?

A. No—study the charts?

Q. Yes.

A. The mate——

Q. In Baltimore?

A. No.

Q. Have you ever studied the charts since this collision?

A. What do you mean, studied the charts.

Q. Have you examined the chart to figure out where you were?

A. Sure.

Q. You know about that?

A. Sure—I don't know what you mean.

Q. This is a chart of Baltimore Harbor (indicating). Have you familiarized yourself with this chart—do you

know where the buoys were and what buoys you have referred to?

A. I don't know about that, but maybe I can tell you something.

Q. Before this collision had you ever looked at this chart?

A. Oh, yes.

Q. Yes.

A. No, sir, I never looked at that.

Q. You have looked at the chart since the collision?

A. Since the collision, yes.

Q. Can you point out on this chart where that white flashing buoy was and where the red flashing buoy was?

A. Maybe I can tell you if you tell me what channel we are using.

Mr. Farwell: I can say this. I have not shown him the chart. I don't think he has ever seen the chart.

Q. The only two lights that you observed about the time of the collision was the white flashing buoy light and the [fol. 119] red flashing buoy light?

A. Yes, but the flashing red light is over on the other side of the channel.

Q. That is on your starboard side?

A. On the starboard side.

Q. Was that flashing red light abaft your beam?

A. About abaft the beam at that time. I don't remember, you know, but just about abaft. I don't remember that. I don't remember.

Q. You are not sure of the bearing of that flashing red light?

A. Yes, I am not sure about that.

Q. Are you sure about the bearing of the flashing white light?

A. White light, yes.

Q. You are sure about the other?

A. I am sure about that.

Q. Did you take that bearing immediately before the collision?

A. That white flash?

Q. Yes.

A. The white flash before the collision I see on the starboard bow—on the port bow and after, maybe close to one

minute after or half a minute before the collision I see the white flash amidship abeam.

Q. Half a minute before the collision you saw the white flashing buoy abeam on your port side?

A. On the port side.

Q. And that is just about half a minute before the collision?

A. Half a minute before the collision.

Q. Can you tell us toward what point on the land your ship was heading?

A. No, I don't remember that.

Q. And what time did you observe the flashing red light on your starboard side?

A. On the starboard side, what do you mean?

[fol. 120] Q. Yes, after or before the collision?

A. Before the collision.

Q. You saw that before the collision?

A. Yes.

Q. You thought it was a little abaft your beam?

A. The red light is on the starboard side, you see.

Q. Yes.

A. And when my ship started to turn around then that red light—I don't remember—but it was abaft the beam, I guess.

Q. Didn't the El Isleo shut out your view of that red light at any time?

A. The white flash first and my ship started to turn around and that steamer came to my ship in there (indicating) right on the bow.

Q. Did you observe any change in the speed of your ship before the collision?

A. No, I don't remember that.

Q. How fast was your ship going at the time of the collision?

A. It came slow, I know.

Q. Slow?

A. Yes, I seen the water did not come around fast.

Q. Had she been coming slow all the time?

A. All the time, yes.

Q. Did she slow up any just before the collision?

A. I don't remember that, because, you know I am quite so excited.

Q. That is, you were watching the other ship?

A. Yes, sure, I watch the other ship.

Q. And the ships were coming together?

A. Yes.

Q. And naturally you kept your eyes on the other ship?

A. On the other ship, yes.

Q. You would be looking from the starboard side all the time, wouldn't you?

[fol. 121] A. No, I looked and I saw the ships too close, I looked on the starboard side all the time because I was looking for the other ship to come on top of my ship.

Q. You were not looking around you to see what was on your port side?

A. I looked around and I looked enough to see the other ship coming.

Q. After the other ship got all clear after the collision then you looked over to port and you saw the flashing white light?

A. Flashing white light, yes.

Q. And that is the first time you saw that flashing white light?

A. No, not the first time.

Q. You didn't see that before you started to make the turn?

A. I saw before we started to make the turn.

Q. And then from that time you started to make the turn until some time after the collision you kept watching the other ship?

A. I watched the other ship, you know, and the other ship came ahead.

Q. Did you notice whether the Eastern Glade's engines were reversed before the collision?

A. I don't know.

Q. Could you have let go the anchors if you received an order to let them go?

A. Yes, I would have been able to, I think, because I know that windlass.

Q. Have you ever done it?

A. No, I have got to work under orders.

Q. Have you ever done it on any other occasion, let go the anchors?

A. The other times?

Q. Yes, other times.

A. Yes, other times—there were many times.

[fol. 122] Q. All by yourself?

A. Yes, by myself, when the captain told me to do it.

Q. And can you say how far away the other ship was when your ship blew two blasts?

A. Oh, it is very far.

Q. Very far away?

A. Yes.

Q. Does that mean a mile or more?

A. Yes, about a mile, I guess. I could not say exactly. It is a long time. I could not tell exactly.

Q. And the answer to that signal was four blasts from the other ship?

A. Four blasts from our ship first and the other ship answered four short blasts.

Q. Did you hear any one blast signal?

A. No, I don't remember that.

Q. At the time of the first four blast signal?

A. The first——

Q. The first four blast signal?

A. Before the collision?

Q. Yes. But the one that came next after the two-blast signal. Do you understand what I mean? How far apart were the vessels then?

A. That two-blast signal——

Q. Then you were a mile or more?

A. Yes, about a mile.

Q. And then the next signal is four blasts?

A. Yes.

Q. How far apart were the ships then?

A. The other ship, you mean?

Q. The first four blast signal, how far away was the other ship?

A. Oh, it is very close, the other ship.

Q. How far on your starboard bow was the other ship then?

A. When the collision came?

Q. No, at the time of this four blast signal?

[fol. 123] A. It is now amidship abeam because my ship is like this, you see (indicating), and the other ship is about like this (indicating).

Q. That is, she is pretty near abeam of you?

A. Yes.

Mr. Farwell: Abaft the beam, he indicated.

The Witness: Abaft the beam, I guess, that is my ship and the other ship came like this (indicating).

Q. Will you indicate with lines or shapes of vessels the positions of the ships at the time this four blast—you have just indicated with your hands, something like this (indicating). You can make it a little more definite this way.

A. This is my ship there (indicating). This is the other ship, comes in there—she comes right in there (indicating).

Q. At the time of the four blast signal where would you say your ship was?

A. This is my ship, and the other ship at the time of the four blasts, the other ship is about there (indicating).

Q. That is the other ship?

A. Yes.

Q. Where is your ship?

A. My ship is in there (indicating).

Q. Right here (indicating)?

A. Yes.

Q. Like that (indicating)?

A. No, more this way—that is the bow of my ship (indicating).

Q. This is your ship at the time of the four blast signal (indicating)?

A. At the time of the four blast signal.

Q. Isn't that different from the way you indicated with your hands?

A. It is the same thing.

[fol. 124] Mr. Farwell: I must object to your question because the witness clearly indicated to me by the position of his hands that the El Isleo was abaft the beam of the Eastern Glade when the four whistles were blown and the diagram that he has drawn is precisely as he indicated with his hands.

Mr. Wright: I disagree with you.

Q. At the time that your ship was heading into the channel, at the time you first saw the other ship's lights—was she heading on a steady course?

A. The other ship or my ship?

Q. Your ship?

A. My ship was coming into the channel.

Q. I know that.

A. The other ship was coming on the other side.

Q. And was your ship on a steady course when you first observed the El Isleo?

A. I don't know.

Q. You have no idea as to whether your rudder was to to the left or to the right or amidship?

A. When I see the flash white buoy on the port bow.

Q. I am not asking you about the flashing white buoy on the port bow.

A. My ship started to swing.

Q. Had your ship started to swing before you saw the other ship?

A. Yes—no. I saw that ship far away. The first time I saw the ship it was very far from my ship.

Q. Had you started to swing?

A. No, no.

Q. How did the lights of the other ship bear from you at [fol. 125] the time you first saw her?

A. I saw the flash light and the red light——

Q. How did they bear?

A. On the starboard bow—three or four points off the starboard bow.

Q. They were not abaft your beam?

A. Not after we swung.

Q. When you first saw the other ship her lights were not abaft your beam?

A. No.

Q. Do you recall testifying before the local inspectors in Baltimore?

A. Yes, I have been in the inspectors office in Baltimore, yes.

Q. Do you remember these questions and answers?

A. Yes, I remember.

Q. (Reading):

"Q. When you saw all the lights from the other ship coming up, about how did they bear from you on beam?

"A. Aft of beam, far away.

"Q. When you saw them then you were swinging on hard left rudder?

"A. That is right."

—. Did you so testify?

A. Yes, I said this.

Q. You did say that?

A. Yes.

Q. Is that correct?

A. The inspector told me when I saw that light from the ship but he didn't tell me when I saw it before the collision

or after the collision. That don't mean that. You see, the light is on the other ship, and I say yes, I saw it, the flash light and the red light.

Q. When you had first observed the other ship you had also seen the flashing white light off your port bow, hadn't you?

A. Yes, sir.

[fol. 126] Q. And if I correctly understand your testimony when the ships came closer together you kept watching the other ship until some time after the collision and then you looked and you saw the flashing white buoy on your port beam?

A. On the port beam, yes, I saw the light before that—that flash light before the collision.

Q. When you were coming out of Curtis Bay Channel?

A. Yes, when we were coming out from the place, you know.

Q. When the collision occurred your ship swung to port, didn't it?

A. My ship swung to the port side, yes.

Q. She was drawing very little water?

A. I don't know.

Q. And she swung pretty fast?

A. She swung fast, because the other ship came in.

Q. And it was after she swung that you took your eyes off the other ship and looked around and you saw this light abeam on your port side?

A. I don't understand.

Mr. Wright: Read the question, please.

(Question read.)

By Mr. Farwell:

Q. Did you see that light on your port side before the collision?

A. Sure, I saw the white light before the collision, yes. Not after the collision. I saw the white light when my ship came out that channel and as we swung I saw the light on the port bow when the ship swung and when the collision came that flash buoy, it was about midships abeam.

[fol. 127] Mr. Farwell: Will you read that answer to me please?

(Answer read.)

By Mr. Wright:

Q. From the moment the collision occurred you were looking at the other ship. Answer yes or no.

A. Well, I saw the other ship, yes, sir, but I didn't stare all the time at the other ship, you know.

Q. If you are just about to have a collision you are going to keep looking at the other ship, aren't you?

A. What—just about the collision, yes, I see the other ship.

Q. And then you were not looking around you at any buoys on the port side just about the time of the collision?

A. I saw the white flash amidships.

Q. How long before the collision was it that you had last taken notice of that flashing white buoy?

A. Before the collision it was one or two minutes—before the collision.

Q. About two minutes before the collision?

A. About two minutes before the collision—yes, sir.

Q. You observed that the flashing white buoy was about abeam on your port side?

A. Yes, sir, abeam on the port side.

Q. About two minutes before the collision?

A. About two minutes before the collision.

Q. And then you did not look at that buoy again until after the collision?

A. No, I no look after the collision.

[fol. 128] Q. Now we understand each other.

Mr. Farwell: I object. I wish to note on the record that the witness does not speak English at all well and that Mr. Wright is continually leading the witness and is not asking him for the witness' own story but is putting leading questions and getting him to answer as Mr. Wright desires. I object to the line of interrogation in this case of a foreign witness who doesn't understand English well.

Mr. Wright: Well, no further questions.

Re-direct examination.

By Mr. Farwell:

Q. Now, Mr. Batata, just before the collision on which side of the ship were you?

A. Before the collision?

Q. Yes, just before the collision?

A. Just before the collision I was on the bow.

Q. You said something about taking hold of the windlass?

A. Yes, because I am afraid of the other ship when my ship went over to the port side to throw me overboard.

Q. And you had hold of the windlass?

A. Yes.

Q. Did you have hold of the windlass when the collision happened?

A. Yes, sir.

Q. While you had hold of the windlass, did you see the white light?

A. Yes, I saw the white light.

Q. Where was the white light while you had hold of the [fol. 129] windlass?

A. The white light is about amidship abeam.

Q. How long before the collision did you take hold of the windlass?

A. About one minute and a half, you see, because I afraid very much from that big ship.

Q. You are Portuguese, aren't you?

A. Yes, sir.

Q. You do not speak English very well?

A. Not very well, you know.

Q. You reported the lights of the other ship?

A. Yes, sir.

Q. When you reported those lights, what did you say?

A. I says, "Light on the starboard bow, three or four points off starboard bow."

Q. How did the lights on the other ship bear when you reported them?

A. They bore three or four points to the starboard bow.

Mr. Farwell: That is all.

CARL SUNDQUIST, called as a witness on behalf of the Libellant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Farwell:

Q. You are a seaman?

A. Yes, sir.

Q. An A. B.?

A. Yes, sir.

Q. You hold a lifeboat ticket?

A. Yes, sir.

Q. How long have you been going to sea?

A. I was going to sea at 16 years. I am 32 years old.

[fol. 130] Q. You joined the Eastern Glade on December 17, 1935?

A. Right, sir.

Q. At Baltimore, is that right?

A. Yes, sir.

Q. On December 19th, the Eastern Glade left the Phosphate Docks, is that right?

A. Yes, sir.

Q. Where was she going?

A. She was heading down to Canton.

Q. Was she going up to the Standard Oil docks?

A. Yes, to the Standard Oil docks, that is right.

Q. What was your job after the ship got under way?

A. For the first time I was Quartermaster on the Eastern Glade.

Q. As you left the dock how did you go up? Did you back out or go out ahead, do you remember?

A. What dock, the sulphur dock?

Q. The sulphur dock.

A. I don't remember that, sir.

Q. Do you remember that after you got out you were heading along the channel?

A. Yes, I remember that.

Q. While you were going along that channel were you steering a compass course?

A. I was steering a compass course sometime and they changed the course sometime because the Captain says steady up and I took something that I had seen, a light, because a man can give a ship a better course, especially in the channel.

Q. Now, we come down to a short while before the collision when you were still steering out of the channel. Was any buoy ahead of you that you were using as a mark?

A. Yes, I saw the red buoy for a while. Nobody told me to use it but I took that for a mark because in steering you [fol. 131] can give a ship a better course by taking a mark from the land than you do by compass in the channel.

Q. Was that a steady light or a flashing light?

A. A steady light.

Q. Or a flashing light?

A. No, sir, it was a red light, a steady light.

Q. Do you know whether there was a buoy that you were heading for, using as a mark?

A. Sure, it was a red buoy.

Q. Well, now, here on the chart the only red buoy there is a flashing red buoy. You said it was a steady light?

A. Yes; I never take any mark by a flashing light. They are nothing to steer by. You got to have a light that is up all the time, sir.

Q. Well, now, you got down to the end of the channel?

A. Yes.

Q. And when you got down to the end of the channel which way did your ship head or which way did she turn?

A. She turned to the left.

Q. As she turned to the left did you hear any whistles blown by your vessel?

A. Well, I heard two whistles from the Eastern Glade.

Q. Yes.

A. And I heard no other whistle.

Q. And then what happened?

A. Well, before he blew the whistle the Captain ordered me hard aleft, and the ship was swinging slowly—it could not swing fast and I had just put her hard over to the left.

Q. And then they blew two whistles?

A. And then they blew two whistles.

Q. And your ship was swinging?

A. Very slow.

[fol. 132] Q. And after the two whistles were blown by your ship did you hear any other whistles?

A. Yes.

Q. From any other ship?

A. Yes, right after that I heard the Captain pull that wire again because it is right in front of me and I heard four short whistles.

Q. By your ship?

A. By Eastern Glade and it was repeated four short by another ship but I did not see the ship.

Q. You say your ship blew four whistles?

A. Yes, sir, four short whistles, the danger signal.

Q. And that was answered by the other ship?

A. It was the only answer—it was four short, they were

answered from another ship, I don't know what ship that was, but it was from some ship, I did not see it but I heard it.

Q. But the other ship blew four whistles?

A. Yes.

Q. Now, then, when those two sets of four whistles were being blown, what was your ship doing or was she swinging?

A. She was swinging to the left.

Q. Well, as she was swinging to the left did you notice any lights?

A. Yes.

Q. On the port side?

A. I noticed a white light on the port bow.

Q. Yes.

A. I don't know exactly how that was but I know they could not be very far apart, sir.

Q. Was that a steady light or a flashing light?

A. A flashing light—white flash light.

Q. How long after the four blast signals did the collision happen?

A. Almost immediately.

[fol. 133] Q. Did you see the other ship before the collision?

A. I did not see the ship before the collision because this happened so much in a sudden. This Eastern Glade was almost atop of the white buoy and I saw her and she smashed together, and that was the only thing I saw. Of course, it must have had speed.

Q. Which must have had speed?

A. Well, the other ship that ran into the Eastern Glade.

Q. Why did you say that? Did you see her?

A. No, but if she was going slow I could have seen her because it is dark in the wheelhouse and you can see the lights from the wheelhouse when it is dark but when the ships—nobody can figure that out—when the ships have speed you can't hardly think in a case like that, it comes together so fast and it was dark.

Q. Did you notice the compass heading on your ship at the time of the collision?

A. I did not pay any attention to the compass at all. I was steering right with the channel because I took the marks ahead and the Captain said, "Steady up" and I said "steady she go" and I took the mark ahead. I did not pay any attention to the compass especially if the Captain gave me the order, if the Captain says, "Steady she go" and then

I take a mark ahead, something that is set because you got a ship to steer and you can get a better course in the channel especially.

Mr. Farwell: That is all.

[fol. 134] Cross-examination.

By Mr. Wright:

Q. Had you ever steered the Eastern Glade before this day?

A. I never steered—sir?

Mr. Wright: Read the question.

(Question read.)

A. Before the accident, you mean?

Q. Before the day on which the accident occurred?

A. I never steered the Eastern Glade before. I joined her in the sulphur dock and I never steered that ship before because I joined her there at the sulphur dock, you see.

Q. There has been a note-book produced here which indicates there were a great many bells to the engine-room while you were coming down that channel. Do you know why there were so many bells?

A. I don't know because this telegraph is on the bridge, you know, it would be different if the telegraph would be in the wheelhouse, then a man could know more about it but when the telegraph is on the bridge you don't even see it. A man don't pay much attention to it. He can't do that.

Q. Am I to understand that you can't throw any light on the reasons for these telegraph signals—that is, why should the vessel coming out a straight channel every now and then put her engines full speed astern and then maneuver at other different speeds?

A. Well, this Eastern Glade was light, no cargo, light you known, but I did not see the telegraph but I heard some noise; it must be from the telegraph room and I could tell by the vibration of the ship that she must have gone full [fol. 135] speed astern or full ahead, whatever it was.

Q. And that was because she was light and hard to handle?

A. Yes, she was light and that is why I could get the vibration but I don't know whether it was full ahead or full astern, one or the other, I might say, full ahead or full

astern, whatever it is, the whole ship is shaking, windows and everything.

Q. And you assume that the Captain ordered the telegraph put full ahead or full astern and these various maneuvers because the ship was hard to handle?

Mr. Farwell: I object to it.

A. I do not know if it was because the ship was hard to handle. I don't know why he did it. I don't know.

Q. Well, isn't that so, that it must have been to help you get her in her course?

A. No, sir. That didn't have nothing to do with that.

Q. Do you know whether they were having any trouble with the steering gear?

A. No, any ship I have been on I wouldn't take the wheel, I always make a test, I test the gear before I even leave the port or whatever it is. I have been doing that often, so many times, ninety percent of the mates and the captains tell you, and the Captain on the bridge told me this time.

Mr. Wright: I move to strike the answer as not responsive.

Q. Please, Mr. Witness, pay attention to the question and endeavor to answer because that will shorten our time here a great deal.

[fol. 136] Mr. Farwell: I think the answer is responsive.

Q. The Captain gave you a compass course when you got into the Curtis Bay Channel?

A. Yes, he gave me a compass course.

Q. Do you remember what it was?

A. I don't remember what it was because he said after that, he changed it again, and he says, "Steady she goes."

Q. So after giving you a compass course he changed his orders?

A. Yes, sir.

Q. How did he change them?

A. He said "Steady left."

Q. And after you gave her "left rudder" you changed your heading a little?

A. He said, "Steady she goes," yes. I took the mark of the red buoy.

Q. When he told you to steady, how much off the previous compass course he had given were you then heading?

A. I did not notice the compass, sir, I did not pay any attention.

Q. You were then heading for a fixed red light?

A. Yes, sir.

Q. So thence forth you steered by that?

A. Yes.

Q. Kept it to a head?

A. Yes.

Q. You said that he changed the course very often. How many times after you got in the straight channel did the Master change the course?

A. I don't remember that.

Q. Well, very often might mean one thing to you and another to me. Would you say it was seven or eight times?

A. I can't say exactly how many times but there were a [fol. 137] few times, you know. I don't know how many. I know he changed the course, all right.

Q. And that is after he had given you this compass course?

A. No, after he gave me that compass course he said, "hard aleft." That was the last order.

Q. The last order you got was "hard left"?

A. Yes, sir.

Q. That was just shortly before the collision?

A. Shortly before the collision.

Q. Can you give us an idea of how long a time elapsed between the time he said "hard left" and the time the collision occurred?

A. I can't say exactly the time.

Q. Give us your best estimate?

A. I can't say exactly the time.

Q. Not exactly. We know perfectly well——

A. Oh, a few minutes.

Q. How many, three or four or five or six?

A. About four or five minutes, something like that.

Q. So that the ship was under hard left rudder for a matter of four or five minutes before the collision occurred?

A. Yes, sir.

Q. And you say she could not change her course very fast?

A. No, sir.

Q. The speed at which she was traveling would have a great deal to do with how fast she could change, wouldn't it?

A. The speed?

Q. Yes.

A. Well, of course, the faster the ship would go it would be the easier for a ship to swing over or swing from left to right, but when the ship has slow speed and don't move fast we have a very hard time to turn from left to right or right to left, whatever it is.

[fol. 138] Q. The wind was on your port beam?

A. I don't know. I did not pay any attention to that.

Q. If the wind was on your port beam that would also interfere with your swing to port?

A. Yes, sir, especially if we were swinging to port.

Q. You always have a hard time swinging your bow up into the wind?

A. That is right, sir.

Q. And on this occasion you were right and your bow was high out of the water?

A. Yes, sir, the ship was high out of the water.

Q. There has been something read from a weather report indicating that the wind was northerly at the time of the collision. That would put it about on your port beam?

A. I don't know in what direction it was.

Q. But if it was on your port beam it would hamper your turning a bit?

A. If the wind was on the port beam it would because the ship—it would make it harder for the ship to go to port against the wind.

Q. Do you recall whether the Eastern Glade's engines were reversed before the collision?

A. I did not see the telegraph but I could tell by the vibration of the ship that she must have been reversed because sh was shaking, the whole ship, and I could feel it in the wheelhouse.

Q. You felt that vibration about how long before the collision?

A. Oh, for a few minutes.

Q. And before the engines were put astern the ship had been going rather slowly?

A. Yes, sir, going slowly.

Q. So when you put your engines astern it doesn't take [fol. 139] long for ships to check her headway or take all her headway off?

A. That is right.

Q. She had a right hand propeller and backs like most ships?

A. I don't know what kind of a propeller she has got. I don't know about that.

Q. I think the chief mate testified this morning that she had a right hand propeller?

A. I don't know.

Q. Most ships have right propellers?

A. I don't know nothing about it.

Q. You have steered a lot of ships?

A. Yes, sir, I have.

Q. And it has been your experience that when you put the engines full speed astern the stern ordinarily swings to port——

A. When you put the helm?

Q. When you put the engines full speed astern your stern will ordinarily swing to port?

A. Well, I haven't paid any attention to it.

Q. Never?

A. No, sir.

Q. Didn't you observe when you were coming down the channel when the Master would occasionally put his engines astern that you had to give her more wheel to keep her straight?

A. That is right, sir, I did. I gave her more wheel before the collision.

Q. And not alone before the collision, but as you were coming down the channel the note-book indicates that the engines were put astern several times. Now, when the engines go astern don't you have to give her more wheel to keep her straight, more left wheel—left rudder to keep her bow from falling off to starboard?

A. Yes, sure, but if the ship is going ahead—the ship is going full ahead.

[fol. 140] Q. But your ship wasn't going full ahead, so let us leave that out.

A. I say, for instance, the ship goes full ahead, it is much easier for a man at the wheel to steer the ship, and full astern it is all mixed up, it is hard to keep the ship to the left or to the right because it might swing anyway.

Q. Hasn't it been your experience in most ships that when the engines are put full speed astern the bow falls off to starboard unless you give her more wheel to try to keep her straight?

A. I never paid any attention to it.

Q. On any ship you never paid any attention to that?

A. No, sir.

Q. How many ships have you been Quartermaster on?

A. How many ships I have been quartermaster of in my time?

Q. How many?

A. I don't know exactly.

Q. More than five?

A. I have been quartermaster here in the United States for different companies. I haven't counted up but before I came here I was quartermaster in Sweden, Swedish, Norwegian and Danish companies. I tried to figure it out, I have been wondering why the ships fall like that but I don't know why, I think probably because I didn't study navigation.

Q. In Sweden what is the order given when you want the ship to alter her course to port?

A. Alter your course to port.

Q. Alter your course to port?

A. Yes. All the Swedish and their navigation, like I say, give port or starboard, they say—you see, this is port and this is starboard and the American—they take the port side [fol. 141] when you say port they shift it from starboard but the Swedes don't do that, they take the port side and go to the left.

Q. Put the wheel to port?

A. They put the wheel to starboard here, sir. The Swedes they say left, that is port, they put the wheel to the left.

Q. Do the Swedes say, "left" or do they say "port"?

A. They will say port and starboard.

Q. Don't they say wheel to port or wheel to starboard or do they just say port?

A. Well, it depends on the master. Some say wheel to port or wheel to starboard or the master might say port or starboard.

Q. On the American ships that you have worked on when they say starboard they put the wheel to port?

A. When they say starboard they take the starboard side and shift it from—over to the left and when they say port they take the left side and shift it over to the right.

Q. On American ships, have you always worked under those commands, port and starboard?

A. On American ships I have worked under those commands, port and starboard but I don't know exactly, it is just about a year ago they changed to left and right.

Q. What ship were you on when they changed that?

A. I was on one of the Tidewater boats by the name of Samuel Q. Brown.

Q. How long did you work under the new commands, right and left?

A. Well, I was on the Samuel Q. Brown eleven months.

Q. How were the orders on the Eastern Glade given?

[fol. 142] A. The orders on the Eastern Glade were given left and right.

Q. On this occasion did you observe how much your bow fell off when the engines were going astern?

A. I can't tell exactly because I didn't pay no attention to that. It was so dark, you know. You can't see nothing very good from the wheelhouse, it is so dark. It would be different if it was daylight.

Q. You didn't see this El Isleo at all until following the collision?

A. Well, I didn't see that—you mean that ship that ran into the Eastern Glade?

Q. Yes.

A. I saw her when she was right on the bow.

Q. How close to you?

A. I didn't see her no distance from the ship.

Q. No distance at all?

A. No, only saw her when she was right into the ship, see?

Q. If you had looked in that direction, wasn't the pilot house open, the windows, couldn't you see through the windows?

A. The windows were open and the doors were open but you see the pilot house there is a little bit away from the bridge, you know, there is some kind of a passageway to the bridge and I did not pay no attention to the outside, I was paying attention to my steering. I was looking ahead.

Q. Up to the time you were given "hard left" you had a fixed red light to steer by?

A. Yes, I noticed that—I took that light myself.

Q. And after you were given "hard left" you had no fixed object to steer by?

A. No, because it was "hard left" and she was swinging

[fol. 143] to the left from that red buoy, to the left off that red buoy.

Q. So that she was heading to the left on that red buoy at the time of the collision?

A. Yes, sir.

Q. How much to the left of it or how much had you swung under your "hard left"?

A. Well, it was swinging plenty but I don't know how much.

Q. Do you think she swung as much as four points?

A. I don't know exactly because I could not check that because I had nothing, she was going to the left.

Q. She was going to the left very slowly?

A. Yes, very slowly.

Q. And when the engines are put astern you would expect it to stop swinging to the left, wouldn't you?

A. No, because I didn't expect anything. I didn't know the ship was to the left. It was "hard left" and I figured that is all so I put it "hard left." That is all I can do.

Q. Did you observe this flashing red light to starboard just before the collision?

A. Yes, sir, because I had it to steer by.

Q. And although you had altered your course so that you were swinging to the left you had it on your starboard bow, you could still see it?

A. I could not see that red buoy after I had started swinging to the left. I could not see that red buoy because I did not have anything ahead of me. We were swinging to the left.

Q. Do you mean that you could not see it or that you did not pay any attention to it?

A. I didn't see it and I didn't pay any attention to it. The [fol. 144] ship was swinging to the left and I had nothing to worry about. When the ship is hard to the left I have no responsibility for it, I put it hard to the left and that is all I have to worry about.

Q. Didn't you get any further commands after it was hard left?

A. No, sir.

Q. You had had your rudder hard aleft?

A. Right, I still had it hard to left up to the time the two ships met together.

Q. For how long a period did you say your rudder was hard aleft?

A. A few minutes.

Q. How long?

A. About four or five minutes, something like that.

Q. But you haven't any idea how much she swung?

A. I haven't any idea how much she swung, no, sir.

Q. Will you give us your best estimate of that?

A. Yes.

Q. What is your best estimate?

A. I don't understand what you mean.

Q. I mean your best estimate as to how much she swung whether it was two, three, four or five points?

A. I can't tell. I don't know how much she swung because I didn't even look on the compass.

Q. The collision occurred sometime after you left the flashing white light on your port side or did you observe that white light?

A. Sure, I saw that white light, yes, on the port side after she started to swing to left.

Q. And then, when it came abeam of you you didn't see it any more?

Mr. Farwell: The witness hasn't testified that he saw the white light abeam of him.

[fol. 145] The Witness: When the ship was swinging to left I noticed the white flash light to left.

Q. On your——

A. On the port side, on the port bow.

Q. On your port bow?

A. Yes.

Q. Did you see it after it was on your port bow or did you see it when it was abeam or any time after it was abeam?

A. I did not see it when it was abeam or anything; it was on the port bow. I don't know how far between, but around that, because it was very, very close.

Q. And you would never steer by a flashing red light, would you?

A. What was that?

Q. You would never steer by a flashing red light?

A. No, sir.

Q. The chief mate testified a little while ago that the El Isleo blew four blasts in answer to the Eastern Glade's

two blast signal and before the Eastern Glade blew her four blasts. Do you think that is correct—

Mr. Farwell. I object to the question. It is improper.

A. The only way I heard those signals was that there were two whistles of the Eastern Glade and right after there were four blasts from the Eastern Glade and immediately it was answered by four blasts from another ship but I don't know what ship.

Q. Didn't you hear any one blast signal?

A. I did not hear no one blast signal.

Q. How long before the collision was it that the Eastern Glade started to blast?

[fol. 146] A. Oh, that was—I don't know exactly how long before but it was quite a time because I was steering.

Q. Four or five minutes?

A. It was quite a bit of time before she gave the four blasts. I don't know how long. I imagine about four or five minutes.

Q. And immediately after the two blasts Eastern Glade sounded four blasts?

A. Yes, sir.

Q. And immediately after that the other ship blew four blasts?

A. Yes, I heard four blasts in answer but I don't know where it came from.

Q. Now, you can sound those signals pretty rapidly. You could have all three of those signals in space of half a minute very easily, couldn't you?

A. Well, I say I heard it was just like I said.

Q. Well, didn't it seem to you that those three signals occurred one right after the other?

A. Well, not very far between because there was not much time between.

Q. You know when you start figuring it out exactly half a minute is quite a long time, isn't it?

A. I don't know.

Q. It is thirty seconds?

A. Sure it is thirty seconds.

Q. It takes about the time that you can count up to thirty. Don't you think then that those four blast signals were sounded four or five minutes before the collision?

A. From what ship—from the Eastern Glade?

Q. Both of them—from both, isn't that about the same time?

A. Well, I don't know exactly how many minutes between [fol. 147] but there wasn't a very long time. I don't know—it was a very short time. It was very close.

Q. The signals were very close together?

A. Yes.

Q. Well, that is my argument exactly, that it did not take long to blow those signals and, therefore, it must have been a matter of at least four minutes between the time the four blast signals were sounded and the time of the collision.

A. I noticed there was a shorter time between the two signals—the signals from Eastern Glade was very close, but the signals—the four signals from the other ship, they took a longer time before giving any signal.

Q. How many seconds did it take them to answer?

A. I don't know how many minutes or any seconds. It could not be very long.

Q. You said a little while ago it was immediately after so I take it that it is two or three or four seconds?

A. It wasn't right immediately after, it was some few minutes after. That is the way I noticed it.

Q. If the other ship was going anything like as fast as you seem to think she was, she must have been quite aways from you four minutes before the collision, wasn't she?

A. I don't know how far away because I did not see that ship.

Q. Will you give us any estimate as to how long a time elapsed between the time Eastern Glade sounded her four blast signal and the time of the collision?

A. From the time you mean, we blew the four blasts?

Q. Yes,

A. Well, that wasn't very long.

[fol. 148] Q. How many minutes?

A. Well, just about four or five minutes.

Q. Do you know whether the chief mate was called up to the bridge and what he talked to the Captain about?

A. No, sir. The Captain was on the bridge but I don't know what it was all about.

Q. Had there been any labor trouble on the ship?

A. Labor trouble?

Q. Strikes?

A. No, sir.

Q. The whole crew new?

A. No, not the whole crew.

Q. Most of them?

A. Well, they came from the East Coast—when we do that we always get a new crew. After a trip like that most of the ships I have been on the whole crew get off after a trip like that.

Mr. Wright: That is all.

Re-direct Examination.

By Mr. Farwell:

Q. Did you try out the steering gear before you left the dock?

A. Yes, sir.

Q. Did it work all right?

A. It worked all right to me.

Q. Did you have any trouble with the steering gear from the time you left the dock up until the collision?

A. No, sir, I had no trouble with the steering gear.

Mr. Farwell: That is all. We shall have to adjourn.

(Thereupon, at 2 o'clock, P. M., the taking of depositions was adjourned till Monday, March 16, 1936, at 4:30 o'clock, P. M.)

[fol. 149] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

POSTAL STEAMSHIP CORPORATION, as owner of the steamship EASTERN GLADE, Libellant,

against

STEAMSHIP EL ISLEO

Depositions taken on behalf of the libellant, at the office of Messrs. Barry, Wainwright, Thacher & Symmers, 72 Wall Street, New York City, March 16, 1936, at 4:30 P. M.

APPEARANCES

Messrs. Barry, Wainwright, Thacher & Symmers (Mr. Farwell), for the Libellant.

Messrs. Burlingham, Veeder, Clark & Hupper (Mr. Wright and Mr. White), for the Claimant.

Same stipulation as heretofore noted.

SPIROS GHIKAS, being duly sworn and examined as a witness for the libellant, testified as follows:

Direct examination.

By Mr. Farwell:

Q. You are the chief engineer of the steamship Eastern Glade?

A. Yes, sir.

Q. What license do you hold?

A. Chief engineer's, unlimited.

[fol. 150] Q. How long have you held it?

A. About fifteen years—since 1921.

Q. You are a naturalized American citizen?

A. Yes.

Q. When did you join the Eastern Glade?

A. In March, 1935.

Q. And you have been her chief engineer ever since?

A. Ever since.

Q. On December 19, 1935, where were you when the vessel got under way?

A. I was down below in the engineroom.

Q. Did you remain in the engineroom from then up until the collision happened?

A. I remained in the engineroom—I went up for my supper, and I came back.

Q. When you came back in the engineroom after supper, how were the engines going?

A. The engines were going full speed ahead.

Q. Do you know about what time it was when you came back into the engineroom?

A. Yes, it was 5:32 or 5:33.

Q. Whom did you relieve?

A. The first assistant engineer.

Q. Did he stay in the engineroom?

A. He was in the engineroom when I went down, yes.

Q. Did he stay in the engineroom?

A. No, he went up.

Q. And then you were there?

A. I was there.

Q. Anyone else with you?

A. And the oiler.

Q. What is the oiler's name?

A. I can't tell you because he left the ship.

Q. How long ago did he leave the ship?

A. He left the ship after a couple of days after that happened.

[fol. 151] Q. After you came into the engineroom the second time, what was the first signal that you got?

A. I got stop.

Q. And did you stop the engines?

A. Stopped the engines.

Q. Do you remember what time that signal came down?

A. I guess around 5:34.

Q. What is this book that I have here?

A. That is the bellbook.

Q. If you are not sure of the time, will you refresh your recollection by looking at that bellbook, and tell me what time the stop bell was received in the engineroom?

A. The stop bell was received by me at 5:34—stop.

Q. And you stopped the engines?

A. I stopped the engines.

Q. What was the next signal?

A. The next signal was full speed astern.

Q. What time did you get that signal?

A. I got that signal at 5:38.

Q. When did the collision happen?

A. The collision happened a couple of minutes after the full speed astern—a minute and a half or so.

Q. How long were your engines backing before the collision?

A. Before the collision, a minute and a half or two minutes, something like that.

Q. Could you feel the collision?

A. I felt it, yes. I felt the bump.

Q. Did you make an entry in any of your logbooks about the time of the collision?

A. Yes, I made this "5:40" in the logbook (indicating the smooth engineroom log).

Q. Where is the rough logbook for the day?

[fol. 152] (Witness indicates.)

Q. The book that I have in my hand is what—the smooth logbook?

A. The smooth logbook, yes.

Q. For that date?

A. Yes—that is for December 19th.

Q. And the entry says, "We had a collision with a Morgan Line ship, 5:40 P. M. December 19, 1935." Whose handwriting is that?

A. That is my handwriting.

Q. What book is this?

A. That is the rough logbook.

Q. For December 19th?

A. For December 19th.

Q. What is the entry in the rough logbook about the collision?

A. "Ship collided with a Morgan Line ship at 5:40."

Q. In whose handwriting is that?

A. The first assistant's.

Q. Why did he make that entry in the rough log?

A. Because he was on watch at that time.

Q. The first assistant had the watch from 4 P. M. until 8 P. M.?

A. Yes.

Q. Before the collision, you got a signal of full speed astern?

A. Yes.

Q. What was the next signal that was received in the engineroom after that?

A. Slow ahead.

Q. And what time did that come down?

A. (Referring to bellbook.) 5:48.

Q. Did you remain in the engineroom until the vessel got up to the dock?

A. No—after that I went up.

Q. When did you leave the engineroom?

A. After that full speed astern, when I heard the bump—the first assistant engineer came down, and then I went [fol. 153] around to see what was the trouble.

Mr. Farwell: I wish to have the engineroom bellbook marked for identification.

(It is marked Eastern Glade Exhibit 1 for identification.)

Q. Chief, who made the entries in the bellbook (Eastern Glade Exhibit 1 for identification) for the stop at 5:34 and the full astern at 5:38?

A. I did.

Q. Are those in your handwriting?

A. Yes.

Q. How long did it take you to reverse the engines after you got the signal full speed astern?

A. Ten seconds.

Q. Did you have any trouble with the engines?

A. No, sir.

Q. If there was any trouble with the steering gear, would that be reported to you?

A. It would be reported to me if there was any trouble with the steering gear.

Q. Was there any trouble with the steering gear on December 19th?

A. No, sir.

Mr. Wright: That is, no report was made to the chief about trouble?

Q. So far as you know, Chief?

A. So far as I know—I know we had no trouble at all.

Cross Examination.

By Mr. Wright:

Q. How long after the collision was it that the first assistant came down in the engineroom?

[fol. 154] A. A couple or three minutes—right away he came down.

Q. Had he left the engineroom as soon as you came in about 5:32?

A. Yes.

Q. Where did he go?

A. Go to eat supper.

Q. Do you eat before he does?

A. I eat before he does.

Q. You were handling the engines and recording the bells in the bellbook?

A. Yes.

Q. Is that the custom on your ship?

A. Well, I used to do that all the time—I do that all the time.

Q. Do the assistants do that, too?

A. Do what?

Q. Do they make the entries in the bellbook, or do they usually have an oiler do that?

A. All the time there is the third assistant down there to do that.

Q. But on this occasion, the third assistant wasn't down there?

A. He was down there, but he went to eat with the first assistant.

Q. The bells, up to and including the full astern 5:30 and full ahead 5:31, are in whose handwriting?

A. That is the third assistant engineer's.

Q. And he was making those entries in the bellbook while the first assistant was handling the engines?

A. Yes.

Q. But they both left, so you had to do both?

A. Yes.

Q. Do you know why the engines were maneuvered so often during the——

A. I don't know, but all the time we had been there before, and it was a narow place and they were maneuvering. You can see in this same book (indicating).

[fol. 155] Q. Every time the Eastern Glade gets in a narrow channel, she has engine maneuvers?

A. In every ship I had been in so far, in a small place like that, they maneuver the engines.

Q. How many ships have you served on as an engineer officer?

A. Here in the United States I have been in this company for fifteen years only, and altogether, and I was in the Tracy before that five years—in the Tracy, three of them—they sent me from one to the other.

Q. Were these colliers?

A. Colliers, yes.

Q. And you say when all those vessels are in a narrow channel——

A. Narrow channel and crooked like that.

Q. Are your familiar with the Curtis Bay Channel?

A. Non

Q. You don't know whether it is crooked or straight?

A. I saw it—I don't know it is straight or not, but I think it is crooked.

Q. If it were a straight channel, you wouldn't expect all these bells, would you?

A. No.

Q. So, if it were a straight channel, and the chart shows that it is a straight channel for a considerable distance, can you explain why these engine maneuvers were made?

A. I can't.

Q. As soon as you got the bells to go full astern, you executed the order?

A. Yes, sir.

Q. It only took you a matter of ten seconds?

A. Ten seconds.

Q. She has a right-hand propeller?

A. Right-hand propeller.

Q. Which causes her to back to port when you put the engines full astern?

A. When you reverse the engines, yes, sir.

Q. Your stern swings over to port, doesn't it?

[fol. 156] A. I don't know whether the stern swings to port —I don't know that part.

Mr. Farwell: The witness is an engineer officer and not a deck officer, for the information of counsel.

Q. You don't know whether she backs to port or not?

A. No, I don't know whether she backs to port or not—the engine backs, yes, but I don't know she goes to port or starboard.

Q. You don't know whether the ship swings——

A. She goes back.

Q. In a straight line?

A. I don't know which way she goes—she makes astern.

Q. Isn't it true that if you are lying at anchorage or at a dock, and you put your engines astern, and you are lying still, your ship backs in a circle and your stern is swinging to port?

A. I don't know that.

Q. You didn't put any mark in the bellbook to indicate the collision, did you?

A. No.

Q. And the first assistant wrote in the rough log?

A. In the rough log, yes, as I told him. I went up and found out what was the trouble and I told him to put down there was a collision—I told him what was the trouble.

Q. How did he get the time to put 5.40?

A. He took it.

Q. You didn't take the time yourself?

A. No, I didn't take the time of the collision.

Q. The first assistant took that from the clock?

A. Yes.

Q. When he came back down to the engineroom?

A. Yes.

[fol. 157] Q. And he came down in the engineroom two or three minutes after the collision occurred?

A. After the collision occurred. He put that when he finished his watch, 8 o'clock; and when he finished his watch

he put down, and then he put down the time we had the collision.

Q. Where did he get the time?

A. I told him.

Q. I thought you said you didn't take the time?

A. I looked but I didn't put it down.

Q. Then you did look at the clock at the time of the collision?

A. At the time of the bump. I didn't know it was a bump or something else, I heard a bump, I didn't know what it was, I thought the ship struck rocks or something.

Q. You felt the bump?

A. Yes, I felt the bump.

Q. But you didn't write down the time it was then?

A. No.

Q. On anything—you didn't write it on a scrap of paper or something?

A. No. I was down at the throttle and I heard that bump, and I don't know what next bell I had. The oiler was oiling the engine.

Q. He was oiling the engines all the time that you were down there?

A. Who?

Q. The oiler?

A. Oil the engines, looking around—he can't stay by me.

Q. Isn't it customary to have one man handle the engines and another man take the bells?

A. Yes, but any emergency you can go see the things—the engineer can answer, too.

Q. What emergency was there about 5.32 or 5.34 P. M. to cause the oiler to leave the bellbook and go elsewhere?

A. Not emergency, but lots of things happen. I had the [fol. 158] back pressure on, and the safety valve goes on when you have more back pressure, so you got to open the valves to release the steam.

Q. That isn't automatic?

A. No, not automatic.

Q. And so to relieve that superfluous steam, the oiler has to open the valves?

A. Yes, open the valves—back pressure—and then the oiler has to look at the gauges, the water and oil. He is supposed to go and open the valves.

Q. Are those safety valves?

A. No. I say the oiler was supposed to go around and

look at the boilers and the water and the glasses—the gauge.

Q. Don't the firemen take care of that?

A. No.

Q. They have gauges in there?

A. The gauges are in the engineroom.

Q. All of them?

A. All of them.

Q. Is that customary?

A. That is customary in every ship—it is that way.

Q. You said the collision occurred a minute or a minute and a half or two minutes after the full speed astern bell at 5.38?

A. Yes.

Q. Did you also say that you looked at the clock at the time you felt the bump?

A. Yes.

Q. What time did the clock show?

A. The clock showed 5.40.

Q. Well, then, you could tell us that the collision occurred two minutes after the full speed astern bell, couldn't you?

A. A minute and a half—I say two minutes, yes, after that.

Q Well, it was certainly more than a minute, wasn't it?

A. It might be more than a minute, but I can't know exactly how many seconds it was.

[fol. 159] Q. I don't reconcile your first answer, where you were indefinite as to the time of the collision, with your subsequent statement that you saw the clock and it showed 5.40 at the time of the bump.

A. Yes.

Q. Are you certain that the collision didn't occur between 5.34 and 5.38?

A. No.

Q. You are not certain of that?

Mr. Farwell: The witness obviously misunderstands the question.

Q. Would you deny that the collision occurred between 5.34 and 5.38?

Mr. Farwell: I object to the form of the question as not being phrased so that it is clear.

Q. Do you deny that the collision occurred between 5.34 and 5.38?

A. No.

Q. You do not deny that?

A. The collision happened—I maybe made a mistake—I picked the wrong line from the bellbook, and instead of it was full astern at 5.38, I said it was between 5.34 and 5.38.

Q. In other words, you told the Local Inspectors that the collision occurred between 5.34 and 5.38?

A. If I did say that I made a mistake.

Q. Did you tell them that?

A. Maybe I told them, maybe, but if I say that——

Q. Have you read over your testimony before the Inspectors?

A. No, I don't think so.

Q. You remember testifying before the Inspectors?

A. I don't remember that.

[fol. 160] Q. You remember testifying?

A. Oh, yes, I remember..

Q. You don't remember saying what this transcript shows you said?

A. Yes, I don't remember that.

Q. You recall that you were asked to read off the bells?

A. Yes.

Q. And you did?

A. Yes.

Q. And you read all those bells from 4.55 on?

A. Yes.

Q. And including full ahead 5.31, stop 5.34, full astern 5.38, slow ahead 5.48, full ahead 5.49, stop 5.50. Then you continued to say "The collision occurred between 5.34 and 5.38."

A. Yes, I remember the Inspector asking what time the collision happened.

Q. And you told them what I have read to you?

A. Yes, but as I say, I made a mistake because I was looking in the bellbook here and I picked the wrong line.

Q. I believe you testified before the Local Inspectors on the day after the colfision.

A. Yes, I guess it was that day.

Q. Your recollection then was at least as good as it is now, wasn't it?

A. Yes, but when I go there I always get excited, even

now I am excited over here. I have never been in court all my life, that is why I make mistake.

Q. Did you have your rough log up there before the Inspectors with you?

A. No, only the bellbook he asked me.

Q. The day after this collision, didn't you recall that you looked at the clock and saw the bump occurred at 5.40?

A. Yes.

[fol. 161] Q. Doesn't it seem rather strange that you wouldn't tell the Inspectors that?

A. Tell the inspectors what?

Q. That the collision occurred at 5.40 when you entered it in the logbook——

A. No, I had this bellbook with me, that is all. The bellbook doesn't show what time the collision was, doesn't say anything about the collision.

Q. The next day wouldn't you remember the time of the collision if you yourself looked at the clock?

A. No, but they asked me between what time.

Q. No, they didn't ask you between what time.

A. Yes, they did.

Q. They just asked you the bells, and then you said the collision occurred between 5.34 and 5.38. As I read it you weren't asked what time the collision occurred. The question was, "Will you read from the logbook the bells you received from the time you straightened up and started down Curtis Bay Channel." You weren't asked what time the collision occurred, you volunteered that information.

A. No, I remember well——

Q. That is what the record shows. Do you think that record is wrong?

A. No. I don't say it is wrong. I know they asked me about all the bells and I answered it.

Q. When you made that answer, you were, in effect, telling the Local Inspectors that your engines were stopped——

A. Yes.

Q. (Continuing.) at the moment the collision occurred?

A. Stopped?

Q. That they were not moving either ahead or astern, be-

[fol. 162] cause you say that the collision occurred between the stop bell and the full astern?

A. No, I never said anything like that, the engine was going full astern at the time the collision happened.

Q. You weren't certain of that at the time you were testifying before the Local Inspectors?

A. They didn't ask me anything about that, just the bells they asked me and that is all I answered, just what they asked me.

Q. Is there any erasure in that bellbook?

A. This is my handwriting.

Q. Did you rub it out after making the entry?

A. I didn't rub it out at all.

Q. It looks pretty smeary around there?

A. That is the way I wrote it—always are.

Q. It does appear to me that that 5.34 entry originally was something else. Do you recall about that? You see the "5"—there are many funny marks.

A. This is funny, too (indicating), and there is many marks funny here around here, too.

Q. I don't see any quite as funny as that one.

A. Look at this (indicating).

Q. You mean in various places you will find erasures?

A. The hands are dirty, you know. Look at this standby.

Q. You mean that has been erased?

A. No, it has not been erased. See 5 o'clock here (indicating).

Q. You see all those marks on the "5"?

A. For instance, I see this don't show good and I put this on the top (indicating).

Q. Do you recall making any change in this 5.34 entry?

A. No, sir, I don't make no change.

[fol. 163] Q. You don't recall it?

A. No.

Q. Do you get a new log each trip?

A. Yes, we get a new log each trip.

Q. Where do you get them—out on the West Coast or this coast?

A. No, from the East Coast, when we start from the East Coast.

Q. Every time you start from the East Coast you get a new log?

A. Every time that the log is finished we start a new one.

Q. Where do you turn in these logs—to New York?

A. Yes—I got that on the ship.

Q. But you start a new log each westbound voyage, is that right?

A. Yes.

Q. I see that your smooth log entry for December 19th is on the last page of the logbook.

A. Yes, started a new one. When I left the East Coast for the West Coast I started a new one, the rough and the smooth.

Q. Your rough log—you have got a new one beginning December 15th?

A. Yes, we started, this one was finished.

Q. You keep two, don't you?

A. Yes.

Q. Rough and Smooth?

A. Yes.

Q. This is the old book, and you have got the December 19th entry on the last page?

A. Yes.

Q. This is the rough log, and you have got the collision entry on the second page of the book?

A. Yes, because I do some work—this one has one page less than this one, but I happened in port to write some things in here, that is why—they are not supposed to be on the same page.

Q. This rough log appears to have been started as a smooth log, doesn't it?

A. No.

Q. Are you sure?

A. That is in pencil. Always I write in ink, too, not sup-
[fol. 164] posed to be by pencil.

Q. Chief, will you read those bells, beginning with standby 4.55 and including 5.48.

A. Standby 4.55; slow ahead 5.00; stop 5.07; slow astern 5.07; stop 5.08; half ahead 5.08; slow astern 5.09; stop 5.10; slow astern 5.11; full astern 5.12; stop 5.14; full astern 5.15; stop 5.16; full ahead 5.16; full astern 5.16½; full ahead 5.17; full astern 5.17½; full ahead 5.18; full astern 5.18½; stop 5.19; slow ahead 5.20; stop 5.20; slow ahead 5.21; stop 5.24; half ahead 5.25; stop 5.27; full ahead 5.27½; full astern 5.30; full ahead 5.31; stop 5.34; full astern 5.38; slow ahead 5.48.

Q. When you say now that the collision occurred at 5.40, are you relying upon the logbook entry or upon your independent recollection of what time it was when you looked at the clock when the bump occurred?

A. Yes, I looked at the clock that time.

Q. You are depending on your recollection of the time shown by the clock?

A. Yes.

Q. But when you were testifying before the Local Inspectors you relied entirely upon the bellbook entries?

A. I saw the time—that was 5.40—the time of the bump—the collision.

Q. Did you tell the Inspectors?

A. Maybe I told them something else, I don't know, but I didn't tell the truth—I don't mean the truth—but I maybe made a mistake when I picked the wrong line in that bellbook, because I can't remember all those bells now.

Q. Can you remember now the 5.40, except for the log entry?

A. I remember that.

[for. 165] Q. You remember that perfectly?

A. Yes, I remember that.

Q. Didn't you remember it perfectly the day right after the collision?

A. Yes, I remember he asked me what time between.

Q. I don't see any such question in your testimony before the Local Inspectors.

A. Well, something about that, because why should I say between 5.34 and 5.38.

Q. Do you always make an entry in your book when you feel a bump?

A. Always do.

Q. Did you record a bump the next day when you were leaving the oil dock?

A. I was standing by the throttle, I fell down almost.

Q. Was that the next day?

A. On the same day—the day of the collision.

Q. Did you feel any bumps the next day?

A. The next day I feel a very light bump.

Q. You didn't put any entry in the log about that?

A. I wasn't down there then.

Q. Where were you then?

A. I was up on deck.

Q. What engineer was on watch that time?

A. The first assistant.

Q. The first assistant ordinarily records in the log the time of a bump?

A. No, we have orders to do that—I don't put no time like the time of a bump—I didn't put in the bellbook.

Q. I am talking now about your log. You have got this collision on December 19th entered in your rough and your smooth log?

A. Yes.

Q. I understand you had some sort of a collision the next day, but that is not in your log—why?

A. Because there was nothing wrong in the engineroom.

[fol. 166] Q. Nothing wrong in the engineroom?

A. There was nothing the next day—just felt like that (indicating) collision, I put it, because I wanted to put it.

Q. Did you examine the ship after this collision with the El Isleo—your ship?

A. I examined it from afar.

Q. You didn't examine it closely?

A. No.

Mr. Farwell: Which ship are you talking about?

The Witness: About our ship.

Q. Did you examine it—your ship—again the next day after this other occurrence?

A. No, only the first day, the first night when we went to the oil pier, and I looked at the ship from afar, about 50 yards far.

Q. You were on deck when this collision with the pier occurred the next day?

A. Yes.

Q. Did you see your starboard bow fetch up on the pier?

A. Yes, I saw it from afar, I was standing amidships.

Q. You saw your bow fetch up on the pier?

A. I saw the ship was going there—I don't know how much.

Q. You don't know how much damage was done then?

A. No.

Re-direct examination.

By Mr. Farwell:

Q. Chief, do you get a new logbook on every trip, or do you continue to use a logbook until it is finished?

A. Until it is finished, yes.

Q. Then why did you say that you got a new log every trip?

A. I didn't say that.

[fol. 167] Q. You told Mr. Wright that.

A. No.

Q. (Continuing.) That you got a new logbook every time.

A. Then I made a mistake. I can prove to you. I got all the logbooks right there. This logbook—you can see here I made all the trips, you can see here how many trips we made with this logbook here.

Q. You continue to use a logbook until it is finished?

A. Until it is finished, yes, sir.

Mr. Farwell: I offer the engineroom bellbook in evidence.

(It is marked in evidence.)

Mr. Farwell: I produce the rough logs and the smooth logs.

Mr. Wright: Do you produce the rough deck log?

Mr. Farwell: I will when the third mate testifies. I have it here.

Mr. Wright: How about producing it now and let me look at it?

Mr. Farwell: I produce the rough deck log—do you want the rough or smooth log?

Mr. Wright: Let's put them in evidence.

Mr. Farwell: I offer in evidence the engineroom smooth logbook from August 23, 1935, to and including December 19, 1935.

(It is marked Eastern Glade Exhibit 2.)

Mr. Farwell: I offer the smooth engineroom log from December 15, 1935, to and including January 10, 1936.

(It is marked Eastern Glade Exhibit 3.)

[fol. 168] Q. The first of these smooth logs, Eastern Glade Exhibit 2, runs up to December 19, 1935?

A. Yes.

Q. The next to the last page is December 15th?

A. Yes.

Q. The last page is headed December 19th?

A. Yes.

Q. Now, then, on your following smooth log, which is marked Eastern Glade Exhibit 3, you start with December 15th?

A. Yes.

Q. Although that same date is in the other log?

A. The same thing. I duplicate that so I know in the new book the last entry in the old book.

Q. So what you do is to copy the last two pages of the old book into the new book?

A. Into the new book.

Mr. Farwell: I offer the rough engineroom logbook beginning August 23, 1935, and ending December 12, 1935.

(It is marked Eastern Glade Exhibit 4.)

Mr. Farwell: I offer in evidence the rough engineroom log beginning December 15, 1935, and ending January 10, 1936.

(It is marked Eastern Glade Exhibit 5.)

Recross-examination.

By Mr. Wright:

Q. Chief, whenever you try out the telegraph and whistle and steering engine, you make a note of it in the log, don't you?

A. Yes, sir.

Q. I notice here, December 20th, in the smooth engineroom log marked Eastern Glade Exhibit 3, an entry, "Tried telegraph and steering engine, O. K."

A. Yes.

January 6th reads, "Tried out telegraph, whistle and steering engine. Same O. K." I believe those are in your handwriting.

A. Yes, everything that is in there is my handwriting.

Q. This entire book is in your handwriting?

A. Yes.

Q. But I see no such entry for December 19th.

A. Maybe I didn't put it.

Q. And maybe you didn't try them out?

A. I tried them, you can't leave without trying the whistle and the telegraph and the steering engine.

Q. You said that every time you try them out you make an entry in the log about it?

A. Yes, I make an entry in the log, but sometimes we are so busy down there doing this and that, maybe I overlooked putting it down there.

Q. Maybe you don't try them out.

A. Oh I try them out, you can't leave without trying those things, you might as well say I didn't try the engine.

—. Were you in the engineroom at 4:55, the standby bell?

A. No.

Q. How long was it then since you had been in the engineroom?

A. I was in the engineroom but I was not down below, I was in the machine shop.

Q. Then you didn't try out any steering engine and telegraph and so forth?

A. I didn't try them out personally, but I heard the noise, the noise—the drains from the cylinders.

Q. You heard noises but you didn't try out the steering engine?

A. No. The engineer on watch he does that.

[fol. 170] Q. Generally?

A. Generally.

Q. How many revolutions do your engines make at full ahead.

A. Light or loaded?

Q. Light.

A. About 65-66.

Q. And full astern?

A. Full astern, make the same thing.

Linwood Hudgins, being duly sworn and examined as a witness for the libellant, testified as follows:

Direct examination.

By Mr. Farwell:

Q. You are third mate of the Eastern Glade?

A. Yes.

Q. How old are you?

A. Twenty-seven.

Q. What license do you hold?

A. Third mate's.

Q. How long have you held that license?

A. Two years.

Q. When did you join the Eastern Glade?

A. April, 1935.

Q. When the ship is getting under way leaving dock, where are you?

A. On the bridge by the telegraph.

Q. On December 19, 1935, when the ship left the phosphate dock, do you remember that?

A. I do.

Q. Where was she bound for?

A. Bound for the Standard Oil docks, Canton.

Q. Before the ship got under way, where did you go?

A. I went to the bridge and tried out the gear.

[fol. 171] Q. What gear did you try?

A. Wheel, telegraph and whistle and speaking tubes.

Q. How did they work?

A. O. K.—worked all right.

Q. Where is the telegraph located?

A. That is outside of the wheelhouse on the open bridge on the starboard side about 7 feet from the wheelhouse.

Q. How was the Eastern Glade lying—bow in or bow out?

A. Bow in.

Q. When you got under way, who was on the bridge?

A. The captain, a man at the wheel and myself.

Q. Was anybody on lookout?

A. The chief officer was on the forecastlehead and a sailor on lookout.

Q. How did the ship get away from the dock?

A. We backed from the dock under various bells, and rounded up and proceeded up Curtis Bay Channel.

Q. Are you familiar with Baltimore Harbor?

A. Very slightly.

Q. Up to the time of the collision, how many times had you been there?

A. This was the third time.

Q. Did you keep any record of the bells?

A. As much as I could—I couldn't get them all.

Q. What did you keep it on?

A. Scrap pad.

Q. After the ship got out in Curtis Bay Channel, did you see the El Isleo?

A. Yes, I did.

Q. That is, you saw the ship—you didn't know it at that time?

A. I saw her, didn't know who she was at that time.

[fol. 172] Q. How did she bear from you when you first saw her?

A. A little forward of our beam.

Q. Which beam?

A. Starboard beam.

Q. You said that the chief officer was on the forecastlehead. Did he stay on the forecastlehead?

A. No, the captain called him on the bridge to discuss plans for docking.

Q. When, with reference to your seeing the El Isleo, did the chief officer come on the bridge?

A. Just about the same time.

Q. Did you hear the lookout report the lights of the El Isleo?

A. Yes, he sang out.

Q. At the time these lights were seen, do you remember how your engines were going—when they were first seen?

A. No, I can't say—going ahead—I can't say how they were going though.

Q. After the lights were seen, was any order given to your engines?

A. Yes, we ordered stop.

Q. Who gave that order?

A. The captain.

Q. Did you handle the telegraph?

A. Yes.

Q. Were the engine stopped?

A. They were stopped immediately.

Q. After the engines were stopped, what happened?

A. We went for a minute or so, and the captain gave two whistles.

Q. Did you get any reply or answer to that?

A. The other ship blew four blasts—the danger signal.

Q. How long after your two-whistle signal was that blown?

A. About a minute and a half or two minutes.

Q. What was done on your ship when you heard the El Isleo blow a danger signal?

[fol. 173] A. Put her engines full astern and gave three blasts on the whistle.

Q. Who gave you the order?

A. The captain.

Q. And did you execute the order on the telegraph?

A. Yes, immediately.

Q. Were the engines backed—could you tell?

A. As far as I know the engines were backing, yes, sir.

Q. Could you feel the vibration?

A. Feel the vibration.

Q. How long after your engines were backed did the collision occur?

A. Two minutes.

Q. Do you know what time the collision occurred?

A. 5:40.

Q. How do you know that?

A. I looked at the clock immediately.

Q. Going to the time the two whistles were blown by your ship, was there any other order given by the captain about that time?

A. Yes, he gave the order to put the helm hard left.

Q. Before the collision, did you see any buoys?

A. Yes, I saw the white flashing buoy 7-M close on our port bow.

Q. When you changed your course to port, that is put your wheel to the left, the ship swung which way with reference to that buoy?

A. She swung around the buoy to the left, around the buoy.

Q. Where was that buoy at the time of the collision?

A. That I couldn't say exactly—I should say——

Mr. Wright: Then suppose you don't say if you can't.

[fol. 174] A. (Continuing.) When we rounded the buoy I was on the starboard side of the bridge and that obscured my vision of the buoy.

Q. You didn't see the buoy at the time of the collision?

A. Not at the time of the collision.

Q. When you last saw the buoy, how close was your course toward the buoy?

A. About 30 feet.

Q. Whereabouts in Fort McHenry Channel did the collision take place?

A. Westerly side of the channel—Fort McHenry Channel.

Q. At the time of the collision, how fast was the Eastern Glade going?

A. I don't think she had any headway at all, she was stopped two minutes, stopped her headway.

Q. How about the other ship—you saw her as she approached?

A. Yes.

Q. Did she appear to reduce her speed up to the time of collision?

A. No.

Q. What part of your ship came in contact with the El Isleo?

A. Starboard side of our bow.

Q. Is that the bluff of your starboard bow?

A. The bluff of our starboard bow, yes, sir.

Q. Whereabouts on the El Isleo was the first point of contact?

A. Just a very little bit forward of amidships.

Q. On which side?

A. Port side.

Q. At the time of the collision, or just immediately before the collision, was your vessel on a steady heading or was she swinging?

A. She was swinging.

Q. Which way was her stern swinging?

A. Her stern was swinging to the right, and her bow was swinging to left on a hard left wheel.

[fol. 175] Q. After you reversed your engines, what effect did that have on the swinging of the ship?

A. With a hard left wheel that brought the bow around to the right and the stern to the left.

Q. That isn't quite clear to me. You say with a hard left wheel?

A. The wheel was still left.

Q. I am speaking of the effect on your reversing engines.

A. That brought the stern around to the left.

Q. So that after your engines were reversed, which way was the bow swinging?

A. The bow was swinging to the right.

Q. Was the collision a pretty severe blow?

A. Yes, it was severe.

Q. Did it have any effect on the heading of your ship?

A. Threw our bow around to the left again.

Q. What lights—navigation lights—were burning on your ship?

A. Two side lights, two range lights and a stern light.

Q. Were those lights turned on before you left the dock?

A. Before we left the dock, yes.

Q. Do you know whether those lights were still burning at the time of the collision?

A. Yes.

Q. How do you know that?

A. We have an indicator on the bridge, whenever a light goes out the buzzer makes quite a noise, we can check on that.

Q. And you didn't hear the buzzer?

A. No. We also looked to make sure they were burning.

Q. Did you look yourself?

A. Sure.

Q. Have you any idea how fast the El Isleo was going?

A. I would say about eight miles an hour, I should judge.

[fol. 176] Q. How fast was the Eastern Glade going at the time you stopped your engines?

A. About six.

Q. Immediately after the collision, how did the vessels separate?

A. We swung to the left, the El Isleo proceeded on—came clear.

Q. Judging from the last observation that you had of this white flashing buoy on your port side, and knowing the movements of the Eastern Glade up to the time of the collision, where in your opinion was that white flashing buoy with reference to your ship at the moment of the collision?

A. A little abaft the beam.

Q. You testified that the El Isleo blew danger signals?

A. Yes.

Q. And you answered that from your ship with what?

A. Three short whistles, and reversed engines.

Q. Did you hear the El Isleo blow any other signal?

A. She blew one whistle.

Q. When was that blown with reference to the other signals?

A. Just shortly after the four whistles.

Q. Was that one whistle blown by the El Isleo before or after you had blown your three whistles?

A. That was after.

Q. Did the blow of the collision knock you off your feet?

A. No, it didn't.

Q. What is this book that I show you?

A. Bellbook—what I use for a bellbook.

Q. In whose handwriting are those entries?

A. That is mine.

Q. When did you make those entries?

A. After the accident.

[fol. 177] Q. I notice there are a number of bells here. Did you write down on this piece of scratch paper all those bells?

A. No.

Q. How did you make up the entries that are in this book that is before you?

A. I looked at my scratch pad and compared it with the engineer's bellbook, and I saw they compared perfectly, so I copied his in this book.

Q. When you say that they compared perfectly, do you mean that the——

A. I mean the same bells at the same time he had them, I had.

Q. But you didn't have all the bells?

A. I didn't have all the bells, no.

Q. The lawyer for El Isleo has commented, earlier in the case, that there were a large number of bells——

A. That was necessary.

Q. Just tell me how the ship got out from the dock, what was necessary to be done in order to get out and get turned around so that you could go out the channel.

A. First we had to swing our stern from the dock.

Q. How were the engines going then?

A. Going ahead.

Q. Slow ahead?

A. Slow ahead—maybe half at times.

Q. And then when your stern was clear of the dock, is there a channel or a cut that leads from the dock out into the deeper water?

A. Yes.

Q. How did the ship move through that channel—did she turn around or did she back out?

A. Backed out.

Q. And as you back out—or as you backed out—which direction would your stern have a tendency to go?

A. To the left.

[fol. 178] Q. What was done to keep you in this narrow cut?

A. We had to put the engine ahead several times to straighten her up.

Q. After you got through this narrow cut, was it necessary to turn around?

A. Yes, we turned around and proceeded to the channel then—Curtis Bay Channel.

Q. After you got out through the narrow cut and got turned around so that you could proceed toward Curtis Bay Channel, do you remember what that time was?

A. That was about 5:20.

Q. According to the bellbook, about 5:21 there was a signal given full speed ahead. I notice after that, that the engines were stopped once or twice. Do you know why that was?

A. They were looking for the can buoys in the channel.

Q. And on one occasion the engines were put full speed astern before you got to the lower end of Curtis Bay Channel, do you remember that?

A. That was because we were probably too close to the buoy.

Mr. Farwell: I offer the bridge bellbook in evidence.

(It is marked Eastern Glade Exhibit 6.)

Q. What is this book that I have in my hand that is marked "chief officer's logbook"?

A. That is the rough log—rough bridge log.

Q. Will you look at the page headed December 19, 1935. Are all the entries on that page in your handwriting?

A. Yes.

[fol. 179] Mr. Farwell: I offer the rough deck log in evidence.

(It is marked Eastern Glade Exhibit 7.)

Q. I have another book that is marked "chief officer's logbook," what is that?

A. That is the smooth log.

Q. Is that in your handwriting?

A. Yes.

Q. All except the signatures, of course?

A. All except the signatures.

Mr. Farwell: I offer the page of December 19, 1935, of the smooth deck log in evidence.

(It is marked Eastern Glade Exhibit 8.)

Cross-examination.

By Mr. Wright:

Q. Did you have a searchlight?

A. No. Do you mean a ship's searchlight or a flashlight?

Q. Ship's searchlight?

A. No.

Q. How do you pick up the can buoys?

A. With the eyes.

Q. Glasses?

A. Glasses, yes, we have night glasses.

Q. Who was using them?

A. The captain.

Q. You had no lights to throw on them?

A. No.

Q. Did you have anything up ahead to steer by?

A. Steering by compass courses.

Q. What is the compass course coming out Curtis Bay Channel?

A. I don't know.

[fol. 180] Q. Do you recall what compass course the wheelman was told to steer?

A. No, I don't?

Q. Can't you tell us what the orders to the wheelman were that you heard?

A. With relation to the courses?

Q. Yes.

A. No.

Q. Do you have any definite recollection that he was steering by compass?

A. Yes.

Q. He definitely was?

A. He was.

Q. You didn't hear the captain tell him to steer by anything other than a compass course?

A. When we got in the Curtis Bay Channel he was steering by the buoy 7-M.

Q. That is the flashing white buoy?

A. A flashing white buoy.

Q. Did you hear the captain tell him to steer by that?

A. No. I know he was steering by that, he told me that later that he had that by range, and the captain told him either left a little or right a little if necessary.

Q. Is this all hearsay on your part?

A. No.

Q. Then you do recall hearing the captain tell him to steer by that flashing white light?

A. No, I do not.

Q. Then you are testifying that he was so steering only because he later told you he was?

A. I don't know what course he was on, he said he was steering by the buoy.

Q. The flashing white buoy?

A. The flashing white buoy.

Q. Was there any fixed light up ahead he was steering by?

A. I don't recall.

Q. You have steered a ship?

A. I have.

Q. Is it more difficult to steer by a flashing buoy than a steady one?

A. Not necessarily so.

[fol. 181] Q. The wheelsman testified here the other day that he wasn't steering by a flashing light.

A. I can't say about that. As far as the courses are concerned, I don't know the courses, I don't know what course he was steering.

Q. You could hear the orders?

A. I could hear the orders.

Q. You simply don't recall them?

A. I don't recall them.

Q. You did hear the master give the wheelsman a compass course, did you?

A. No, not that I recall.

Q. Your job was to handle the telegraph?

A. Handle the telegraph, yes.

Q. That was about your only job at the time?

A. That is right.

Q. And you said that one of those full astern bells was because you were probably too close to the buoy. Do you recall that at some time you got too close to the buoy?

A. No, I said probably he was, he may have thought he was.

Q. That is mere speculation on your part?

A. Mere speculation on my part, yes.

Q. And if you had had the time, you would have recorded all these bells on the scratch pad?

A. If I had had the time, yes, and had the way of doing it.

Q. You had the scratch pad right in your hand?
A. Had it in my hand, yes.
Q. And a pencil handy?
A. Yes, had a pencil handy.
Q. So that we can assume, from your not being able to mark down all the bells, that you had no time to take par-
[fol. 182] ticular note of headings or helm orders or bearings?
A. I don't know about the bearings, and I know about the helm orders previous to the accident.
Q. The last helm order preceding the accident was hard left?
A. Hard left.
Q. Have you always used left and right?
A. Always.
Q. You do recall that helm order?
A. Yes.
Q. How was the order given "helm hard left"?
A. "Hard left wheel."
Q. On that order, what direction does the helm go?
A. To the left.
Q. Are you sure?
A. Absolutely.
Q. So the rudder goes to the right—and the ship's bow goes to the right?
A. The ship's bow goes to the left.
Q. And the helm goes to the left?
A. The helm goes to the left.
Q. Which way does the rudder go?
A. The rudder goes to the right—to the left—the rudder goes to the left.
Q. Now, tell us which way the helm goes?
A. The helm goes to the left.
Q. How was the order given?
A. "Hard left wheel."
Q. What was the bearing of the El Isleo when you first observed the lights?
A. Just a little forward of our starboard beam.
Q. You were in Curtis Bay Channel at that time?
A. Yes.
Q. At that time can you recall the bearing of a flashing red buoy light?
A. I didn't notice.

Q. Can you recall the bearing of a flashing white buoy light?

A. Buoy 7-M?

[fol. 183] Q. Well, I suppose so.

A. That was just on our port.

Q. Approximately what was the bearing?

A. I don't know—very close on the bow.

Q. Fine on the bow—just a few degrees?

A. Yes, just a few degrees.

Q. Can you give us any estimate as to the distance between your bow and that flashing white light?

A. At the time we observed this ship?

Q. At the time you observed the other ship.

A. I can't give the exact distance, no.

Q. Approximately—I believe that Curtis Bay Channel is about a mile and three-quarters long.

A. I think I can show you better by the chart than I can tell you.

Q. Well, give us some sort of a range—take as much latitude as you like. I would rather you wouldn't refer to the chart.

Mr. Farwell: If you cannot estimate it, say so.

A. I can't estimate the exact distance, no.

Q. But you can give us your idea of it, and we will appreciate that that is not exact.

A. I would say approximately 500 feet, maybe more, maybe less.

Q. Is it possible that it might have been a quarter of a mile?

A. No, I don't think so.

Q. Possible?

A. I don't think it is quite that much.

Q. But it might have been considerably over 500 feet?

A. May have been a little over 500 feet, may have been a little less.

[fol. 184] Q. If you say that you don't think it was quite a quarter of a mile, which is 1500 feet, don't you infer from that that it might have been considerably more than 500 feet?

A. You asked me the distance off, I told you I don't know, I can show you the distance on the chart much better than I can tell you.

Q. But that is the only light you saw?

A. The only one I took any notice of, yes.

Q. Why then would the chart tell you?

A. Because I know approximately where we were on the chart, and I wasn't taking any particular notice at the time, I wasn't taking any bearings on it.

Q. Did you see El Isleo before the captain gave the order for hard left?

A. Yes.

Q. Are you sure?

A. Yes.

Q. You weren't in a position at that time, that is at the time you first saw El Isleo's lights, where you were running by buoy 7-M, were you?

A. No.

Q. Do you recall testifying before the Local Inspectors, "Q. When you first saw red light on El Isleo, what position in the Curtis Bay Channel was the Eastern Glade then in? A. We were running by buoy 7-M very close up."

A. I saw the ship much before the collision, though.

Q. That then is an error, is it, as it appears here—that is wrong?

A. That is when I first saw the red light. I saw the running lights of the ship when she was quite a ways down the channel.

Q. Did she have the usual lights—the El Isleo?

A. I just noticed the running lights, I didn't notice the red light at the time.

[fol. 185] Q. You wouldn't say that her lights were less brilliant than they should have been, would you?

A. No, I wouldn't.

Q. Further, from your testimony before the Local Inspectors, "Q. When you saw lights on El Isleo, you were under left rudder and swinging around 7-M. A. Yes, close to." Do you recall being asked that question and giving that answer?

A. I don't recall now, it is three months ago.

Q. Do you thing that is correct as there stated?

A. I suppose so.

Q. That is, when you first saw those lights, you were under left rudder?

A. No, that is probably an error—that statement.

Mr. Wright: Will you stipulate, Mr. Farwell, that the transcript reads as I have quoted it?

Mr. Farwell: Yes.

Q. Did you write on this scratch pad what you considered an appropriate entry for the collision?

A. No, I wrote that in the logbook.

Q. The rough deck log is in your handwriting?

A. My handwriting.

Q. You didn't write that out on a scratch pad first?

A. No.

Mr. Wright: I demand the production of the scratch pad on which the bells were originally entered.

Mr. Farwell: Ask the witness where they are.

The Witness: You ask me where they are?

[fol. 186] Q. Yes.

A. I can't tell you. We have no regular bellbook on the bridge, you know, we have a small white pad, stiff back, that we do all our scratch work on. At a time like that, we take all the bells on that, and if necessary make a copy later on, if not we don't keep it.

Q. At what time did you make this entry, "5:40 P. M., while rounding buoy No. 7-M close on port side, vessel collided with Morgan Line SS. El Isleo coming up Fort McHenry Channel. Damage done to ship, stem and bow plates."

A. After the accident when we got to the dock.

Q. When you got up to the dock?

A. Yes, sir.

Q. Which was around 7 o'clock—it was sometime then after 7 o'clock that you made that entry?

A. Yes.

Q. Do you have in your bellbook the time of the collision?

A. I don't know. (Referring to bellbook.) No.

Q. Did you have that on the scratch pad?

A. Yes, I wrote that on the scratch pad.

Q. Then your original entry with reference to the collision was on the scratch pad?

A. No, I didn't make an entry on the scratch pad with reference to the collision.

Q. Didn't you put down "5:40 collided with Morgan Line El Isleo," something like that?

A. I don't know the exact words, I probably had something of the sort, likely.

Q. Did you show that to the captain before you made the entry?

A. I made the entry and showed it to the captain and he said it was all right.

Q. You made the entry before showing it to him?

A. Yes.

[fol. 187] Q. You didn't show him the entry you made on the scratch pad?

A. No, not that I recall.

Q. What is your best recollection as to what information you had on the scratch pad with reference to the collision, besides the 5:40 P. M.?

A. That is all I know of.

Q. You didn't have anything there about buoy 7-M, did you?

A. No.

Q. You didn't have anything about El Isleo coming up Fort McHenry Channel?

A. No.

Q. Isn't it customary for the third mate on the ship, before he writes up an entry such as this one, to consult with the master?

A. I asked the master what I should do about the entry and he told me what he thought would be the proper thing to put in the book.

Q. So he told you that he thought it would be proper to make an entry such as the one that now appears——

A. He didn't tell me the entry to make, he told me to make the entry as it happened.

Q. He didn't say anything to you about mentioning Fort McHenry Channel or buoy 7-M?

A. He didn't tell me to mention anything. He just said to make the entry just as it happened.

Q. You said that the captain told you what entry would be appropriate.

A. He said what he wanted me to do. I said the captain told me what he wanted me to do with the logbook—to write the entry.

Q. And he just left that entirely up to you?

A. Yes.

Q. This was your third time in Baltimore?

A. My third time.

[fol. 188] Q. When you are coming out Curtis Bay Channel, you have nothing to do with the piloting of the ship?

A. Nothing to do at all.

Q. When you were just coming into Curtis Bay Channel and first saw this flashing white light, did you know it was buoy 7-M?

A. Not at the time I didn't.

Q. Did you know that was Fort McHenry Channel crossing the mouth of Curtis Bay Channel?

A. I knew that, yes.

Q. Where did you get this information about the number of the buoy?

A. Got that from the chart.

Q. You figured it out on the chart after you got up to the oil dock?

A. Yes.

Q. Did the captain assist you with that?

A. We were all together when we looked at the chart, yes.

Q. And this buoy was pointed out as being 7-M, and you figured that is where the collision occurred?

A. It is marked "7-M."

Q. The other mates were looking at the chart?

A. The chief mate was there.

Q. Did you hear the discussion between the master and the mate after the mate was called up to the bridge?

A. I only heard parts of it.

Q. Did they talk about the ship being light and hard to handle?

A. No.

Q. Is that the fact?

A. As far as I recall, it is. All I knew was they were talking about arrangements of docking, that is all I heard them say.

Q. The ship was light?

A. Yes.

Q. And a light ship is hard to handle?

A. Sometimes, depending on conditions.

[fol. 189] Q. Was this one hard to handle on this occasion?

A. I don't think so, there was little wind.

Q. What wind there was was on your port beam, wasn't it?

A. I don't recall.

Q. Don't those numerous entries in the bell-book indicate that she was hard to handle, assuming she was in a straight channel?

A. No.

Q. Someone on your ship has testified that she blew four blasts?

A. The Eastern Glade?

Q. Yes.

A. Not that I recall.

Q. That would be one blast in addition to the three blasts that you spoke of, if they are correct?

A. Just a minute—you mean we blew three blasts and one blast afterwards?

Q. If they are correct, you either blew three and one or else four blasts.

A. I don't recall any four. I know a three, signifying she was going full astern.

Q. Did she blow a one-blast signal?

A. No.

Q. When you last saw this flashing white buoy, was it forward of your beam?

A. Yes.

Q. And you figured that your hard left rudder would set you up on a course to pass within 30 feet of that?

A. Yes.

Q. How much further ahead would the ship have had to go to bring that buoy abeam, from the time you last saw it?

A. That would just be a matter of a few feet.

Q. You were over on the starboard side?

A. Yes.

Q. Hardly in a position to judge the distance off the buoy, were you?

A. I could tell the way we were passing before I lost sight of it, we would pass within 30 feet, as near as I could judge.

[fol. 190] Q. Isn't it a fact that a light ship, and you on the starboard wing of the bridge, if you were going to pass within 30 feet of that buoy, you wouldn't see it from the time it came abreast of your bow?

A. Oh, yes, I could.

Q. Was the ship then swinging to port under her hard left rudder?

A. Yes.

Q. And you figured that she would continue that swing and therefore get up to within 30 feet of the buoy?

A. Yes.

Q. That is before you put your engines astern?

A. Yes.

Q. And then you said that when you put the engines astern, or at sometime before the collision, the bow was

swinging to the right, and then when the collision occurred, the collision swung it back to the left again?

A. Yes, under full astern engines.

Q. That is the swing that you would normally expect?

A. Yes.

Q. Especially with a light ship, when you put your engines astern?

A. Not necessarily a light ship.

Q. Were you observing any lights other than the lights of El Isleo, from the time you put your engines astern until the time of the collision?

A. No.

Q. Can you give us an estimate of how many points the bow fell off the starboard during the time your engines were going astern before the collision?

A. No, I can't.

Q. You can't give us any estimate at all?

A. No.

Q. Would it have been as much as three or four points?

[fol. 191] A. I don't know, I don't think so—maybe about three points.

Q. Your stem also struck the El Isleo, didn't it?

A. El Isleo struck our stem, sounds better, and a little more accurate, too, I think.

Q. How much did your bow swing to port after the collision?

A. That I don't know.

Q. Is the second mate still on the ship?

A. Yes.

(Adjourned to 10:30 A. M., March 18, 1936.)

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

POSTAL STEAMSHIP CORPORATION, as Owner of the Steamship EASTERN GLADE, Libellant,

against

Steamship EL ISLEO

(Met pursuant to adjournment, March 18, 1936.)
(Present as before.)
(Same stipulations as heretofore noted.)

VASILY MAXIMOFF, being duly sworn and examined as a witness for the libellant, testified as follows:

Direct examination.

By Mr. Farwell:

Q. You are the first assistant engineer of the steamship Eastern Glade?

A. Yes.

[fol. 192] Q. What license do you hold?

A. First assistant engineer's any gross tonnage.

Q. How long have you held that license?

A. Since October 1, 1931.

Q. When did you join the Eastern Glade?

A. I joined the Eastern Glade September 30th, but it didn't leave port until October 1st. I came on board September 30th, but started October 1, 1935.

Q. Do you remember the collision that happened with the El Isleo in Baltimore Harbor on December 19, 1935?

A. Yes, sir.

Q. What is your watch on the ship?

A. 4 to 8 in the morning and 4 to 8 in the afternoon.

Q. And the collision happened during your watch?

A. Yes.

Q. Before you left the pier, did you get orders to warm up the engines?

A. Yes, I had orders to warm up the engines.

Q. Who besides yourself was in the engineroom during that time?

A. In the engineroom there was the chief engineer, second assistant engineer, third assistant engineer and myself.

Q. When you got under way, were all of you still in the engineroom?

A. Yes, all of us was still in the engineroom.

Q. And did the chief engineer stay in the engineroom?

A. Yes, he was in the engineroom until about maybe seven or eight minutes after five, and then he went up to get his supper.

Q. You got under way about 5 o'clock?

A. No, I think a little before that. We had standby something around quarter to five, I don't know exactly, but around that time, 4:45, we got standby.

[fol. 193] Q. After the chief engineer left the engineroom, who was handling the engines?

A. I handled them.

Q. Did you make the entries in the logbook?

A. No, sir, I did not, the third assistant did.

Q. The third assistant was making the entries in the bellbook?

A. Yes.

Q. Do you remember yourself now what signals you got to the engines?

A. No, sir, I can't say that I remember, it is about three months ago.

Q. You said the chief engineer left the engineroom?

A. Yes, sir.

Q. Did he come back?

A. Yes, he came back about 5:30, maybe 5:31, 5:32, something like that—might be 5:29, something like that—between 5:29 and 5:32.

Q. When the chief engineer came back in the engineroom, how were the engines going?

A. The engines was going full speed ahead.

Q. And then did you stay in the engineroom, after the chief came down, or did you leave?

A. No, when the chief came down he told me to go up and get my supper.

Q. How about the third assistant—did he go up with you?

A. Yes, he go up with me—shortly after.

Q. Where were you when the collision happened?

A. I was in the messroom.

Q. What was the first thing that you knew about the collision?

A. I just started eating and I feel a bump, something bump on the ship's side, and the ship started to slightly list

[fol. 194] to the port side, and I left immediately the messroom and went out on deck.

Q. When you got out on deck, could you see anything?

A. No, sir, I cannot see nothing, because when I ran out from the messroom—there was plenty of lights—and when I ran out in the darkness, couldn't see nothing. It takes a few minutes for my eyes to get used to the darkness, so I asked what happened.

Q. These bright lights that you spoke of—those were the bright lights in the messroom?

A. Yes. When I came out from the messroom—it was bright lights—and I run out in the darkness on deck, I cannot see nothing.

Q. Then where did you go?

A. Ran right down in the engineroom.

Q. When you got down in the engineroom, how were the engines going?

A. The engines were going full speed astern.

Q. And who was down in the engineroom?

A. The chief engineer stood right by the throttle.

Q. Will you look at these entries in the bellbook, which is Eastern Glade Exhibit 1. Now, beginning with the standby at 4:55 and running on to the end of the page which is 5:58, are any of those entries in your handwriting?

A. No, sir—the third assistant's handwriting.

Q. Referring to the rough engineroom log, Eastern Glade Exhibit 5, on the second page under the heading "December 19, 1935," is an entry, "Ship collided with Morgan Line ship at 5:40." Did you write that entry?

A. Yes, sir.

Q. That is in your handwriting?

A. That is in my handwriting.

[fol. 195] Q. When did you make that entry?

A. I made that when we got to the oil dock, when I had the order "Finished with engines"—I had a bell "Finished with engines."

Q. Who told you to make that entry?

A. The chief told me to get the log to write down we collided with the other ship. I says "What is the name," and he says "I don't know." I says "What is the correct time," he says "5.40", or something like that.

Q. Did you have any trouble with the engines while you were on watch?

A. No, sir.

Q. Did you have any trouble with the steering gear?

A. No, sir.

Q. Did you have plenty of steam to handle the ship?

A. Yes, there was plenty of steam, because we took the ship right over to the oil dock, had no trouble at all, there was plenty steam behind it.

Cross-examination.

By Mr. White:

Q. How long have you been going to sea?

A. Twenty years.

Q. You were up in the mess hall at the time of the collision, is that correct?

A. Yes, sir.

Q. I take it you don't know of your own knowledge the exact time of the collision, is that correct?

A. No, I don't know the exact time.

Q. The only information which you had on that point was obtained from the chief engineer?

A. Yes, sir.

Q. And it is upon the information that you obtained from him that you made that entry in the log (Eastern Glade Exhibit 5)?

A. Yes.

Q. Are these other entries in your handwriting?

[fol. 196] A. Yes, that is my handwriting. When I fill out when we got alongside the oil dock, I fill this out, and the chief mate remarked "Don't forget to write that down," so I mark that down.

Q. As I understand it, the second and third assistants were in the engineroom at the same time as you and the chief were, is that correct?

A. Yes, that is correct.

Q. What is the name of the second assistant?

A. His name is Rove, something like that, I am not sure. I think you will find his signature there in the logbook.

Q. Is he on board the ship now?

A. No, he has quit now.

Q. Do you know where he is?

A. No, sir.

Q. What is the name of the third assistant?

A. The name of the third assistant—his last name—I

think the first is John—I don't know the middle name—but the last name is Gallant, something like that.

Q. Is he on board the ship now?

A. No, sir, he has quit.

Q. When did these men leave the ship?

A. They left the ship in Erie Basin.

Q. Just this trip?

A. Yes, sir, this trip.

Q. It was the third assistant who made the entries in the scrap log or bellbook, was it?

A. Yes, he make only in the bellbook.

Q. I notice in the bellbook, between the time of the standby signal at 4.55 and the time of the collision, an extraordinary number of entries. Can you explain those in any way? Just take a look at that.

A. What do you mean "extraordinary"?

Q. Well, if you were proceeding down a straight channel, [fol. 197] you wouldn't expect to have that many orders to the engineroom, would you?

A. No, sir.

Q. Can you give me any explanation of the unusual number of entries which you have there on this occasion?

A. I cannot give you any information, because I am not the pilot or mate. It must be the channel very narrow or bent or something like that, must be too many bends or narrow or something like that, I don't know.

Q. You wouldn't expect to find so many entries if the channel were not bent or narrow?

A. No, sir, I wouldn't expect that many, but I don't know what it was.

Q. All you do is execute the orders?

A. Yes. I don't give the orders, I just execute them, I just receive the orders.

Q. How many revolutions do your engines make when she is going at full speed?

A. When she is light, she make 72.

Q. Was the ship light on this occasion?

A. On this occasion she was light.

Q. What is your normal speed when you are proceeding at full speed?

A. I don't know exactly—maybe 10, 11, something like that—10½—I don't know, maybe, a light ship, might be 12.

Q. Your propellers are righthand propellers?

A. Yes. The engines turn to starboard in going full speed ahead.

Q. Do you have anything to do with repairs to steering equipment?

A. No, sir.

Q. If such repairs were ordered, would you know anything about them?

A. Yes, I would know it, because either way—I must do it myself or call the third assistant—maybe we work together, [fol. 198] the chief and the third assistant and myself, anybody, in case of emergency, but we don't make any repairs on the steering set.

Q. Do you know whether any repairs were made at the time of the collision—that is, a few days before or a few days afterwards?

A. No, sir.

Q. You don't know of any repairs?

A. No, sir, no repairs at all.

Q. You, of course, don't purport to know how long the engines had been reversed when you came down after having your dinner?

A. No, sir, I don't know.

Q. When you went up to have your dinner, the engines were going full speed ahead?

A. Yes.

Q. Do you know when the entries in the bellbook were made?

A. The entries in the bellbook were made right when we get signal from the bridge.

Q. You make them directly onto the bellbook?

A. Yes, sir.

Q. Not on a pad or a piece of paper?

A. No, sir, right on that book. As soon as we answer the bell we mark right down the entries.

Q. You didn't have anything to do with the making of those entries personally?

A. No, sir, not at that time.

Q. Well, did you at any other time?

A. Sometimes happen like nobody around, I answer the telegraph and mark down the bells, but not that time. The third assistant make all them entries.

Q. You don't know about any changing of any entries in this bellbook?

A. No, sir, I don't know anything about that.

[fol. 199] ALLEN T. HUDGINS, being duly sworn and examined as a witness for the libellant, testified as follows:

Direct examination.

By Mr. Farwell:

Q. Captain, you are the master of the Eastern Glade?
A. I am, yes, sir.
Q. How long have you been master of the Eastern Glade?
A. Since last April.
Q. That is April, 1935?
A. 1935, yes, sir.
Q. How old are you, Captain?
A. Thirty-six.
Q. What certificate do you hold?
A. Master of ocean.
Q. Unlimited?
A. Unlimited.
Q. How long have you held that license?
A. Five years.
Q. How long have you been going to sea?
A. I have been going to sea since 1917.
Q. Have you been master of any other vessel?
A. Diamond Cement.
Q. Do you remember the collision between the Eastern Glade and the El Isleo in Baltimore Harbor?
A. I do.
Q. That collision happened on December 19, 1935, didn't it?
A. Yes.
Q. Where was the Eastern Glade lying before she got under way?
A. She was lying head up at the Curtis Bay Phosphate & Acid Works dock.
Q. And you were going to leave there and proceed where?
A. To the Standard Oil docks in Canton.
Q. That is in Baltimore Harbor also?
A. That is in Baltimore Harbor also, yes.
[fol. 200] Q. What time did you leave the dock in Curtis Bay?
A. You mean what time I started to leave the dock?
Q. Yes.
A. 5 o'clock.

Q. And the ship was lying bow in, you said?

A. Bow in, head in, yes—heading to the westward.

Q. Will you please mark on this chart of Baltimore Harbor—make a circle around the dock at which you were lying.

(Witness does as requested.)

Mr. Farwell: I draw a leader from that and mark that "Phosphate dock."

Q. How did you maneuver the ship in order to get away from the dock and out into the harbor?

A. I hove her back a little ways on the windlass, spring line, then put the engines astern and backed her out of the slip.

Q. Before you put the engines astern, was it necessary to swing your stern out?

A. No, because the backing would bring it out.

Q. Coming out through the channel, how did you keep the ship in the channel?

A. Which channel are you speaking of?

Q. I am speaking of this dredged cut leading in a southeasterly direction from the phosphate dock.

A. By backing and filling—working the wheel.

Q. Was the ship light or loaded?

A. Light.

Q. Do you remember what her draft was?

A. 7 feet forward and 11 feet 3 inches aft.

Q. Then after you had backed out through this narrow cut, what did you do then?

A. I worked around to come around to No. 10 buoy.

[fol. 201] Q. And that No. 10 buoy is at what point?

A. At Ferry Point.

Q. What time was it when you got straightened out off Ferry Point?

A. 5.20.

Q. What was the weather like?

A. It was northerly breeze and partly cloudy.

Q. Was it dark at this time?

A. Not when I left Ferry Point, no, it was clear enough so I could see the buoy at Ferry Point.

Q. Were your running lights turned on?

A. Yes.

Q. What navigational lights were you burning?

A. Two range lights, two side lights and a stern light.

Q. Is there any indicator in the wheelhouse to show if any of those lights fail?

A. In the chartroom there is, yes.

Q. Is that a buzzer or something?

A. A buzzer.

Q. Did your lights continue to burn up until after the collision?

A. Yes.

Q. From Ferry Point, in what general direction did you proceed?

A. Do you mean by compass course?

Q. Yes, north, south, east or west.

A. Northerly.

Q. Up into what channel?

A. Up into Curtis Bay Dredged Channel.

Q. Then how did you proceed after that?

A. On ranges.

Q. Where was your vessel when you first observed the lights of El Isleo?

A. She was about at can buoy No. 3, when I first observed them—first saw them.

[fol. 202] Q. What did you do when you saw the lights?

A. I immediately stopped the engines.

Q. At that time, just before you stopped the engines, what speed were you making?

A. Approximately 8 knots.

Q. Who was on the bridge?

A. At that time I made the lights?

Q. Yes.

A. The third officer and the chief officer.

Q. Where had the chief officer been before that?

A. Been on the bow.

Q. And had you called him up to the bridge?

A. I did.

Q. Was there anyone else on the bow after the chief officer left?

A. Yes, the lookout—he is a seaman.

Q. Did the lookout report the lights of the other vessel?

A. Yes.

Q. Did you see the lights before the lookout reported them?

A. Well, it was just about the same time. I was busy watching the ranges, and the lookout and the third officer both reported the lights.

Q. How did the lights of the other vessel bear when you first saw them?

A. Approximately four points.

Q. Where?

A. On the starboard bow.

Q. You testified that you stopped your engines after seeing the lights of the El Isleo?

A. Yes, immediately.

Q. You could tell in which direction El Isleo was going?

A. Yes, by his running lights, could tell he was proceeding upchannel.

Q. Which side light of the El Isleo did you see?

A. Saw his port side light.

[fol. 203] Q. That is the red light?

A. Yes.

Q. Did you see his range lights also?

A. Yes, I could see his range lights.

Q. What was the next thing that you did after you stopped your engines?

A. After stopping my engines—two minutes afterwards I proceeded on, and I blew two whistles indicating I was directing my course to port.

Q. In order to get to the oil docks at Canton, it was necessary for you to make a turn when you got to the end of the Curtis Bay Channel?

A. Yes.

Q. A turn in which direction?

A. Turn to the left, that is upchannel on the Fort McHenry range.

Q. Why did you blow the two whistles to the other vessel?

A. To indicate that I was directing my course to port.

Q. Were your engines stopped at that time?

A. When I blew the two whistles?

Q. Yes:

A. Yes.

Q. Did you get an answer from the other ship?

A. Two minutes after, the answer was four short blasts, followed with a long blast.

Q. What did you do when the El Isleo blew the four blasts?

A. I immediately put my engines full speed astern.

Q. And did you blow any signal?

A. Three-whistle backing signal, yes.

Q. How long after that did the collision happen?

A. Two minutes afterwards—5.40.

Q. Will you please mark on the chart here where your ship was at the time of the collision.

[fol. 204] (Witness indicates with a cross.)

A. Right in here.

Q. Where was your ship when you stopped your engines?

A. She was right here when I stopped the engines (indicating).

Q. Were you on the ranges at that time?

A. Yes, we were on the ranges.

Mr. Wright: Is that at the two whistles?

Mr. Farwell: That is when he stopped the engines. I will draw a leader here and mark that "stop."

Q. Where was your ship when you blew the two whistles?

Mr. Wright: What is this diagram that is put before the witness while he is marking on the chart?

The Witness: A diagram I made myself from the chart.

Mr. Wright: Is it necessary for you to refer to this diagram in order to mark this chart for us now?

The Witness: Not absolutely necessary, no.

Mr. Wright: When was this diagram made?

The Witness: It was made here in this office.

Mr. Wright: How long ago?

The Witness: Last Saturday.

Mr. Wright: In whose presence?

The Witness: In Mr. Farwell's presence.

[fol. 205] Q. Captain, what was the occasion of making that diagram?

A. To show you the positions of the ships and the courses that were laid off.

Q. Did I ask you to plot the position of your ship and the position of the other ship?

A. Yes.

Q. On this diagram?

A. Yes.

Q. And who made the diagram?

A. I did.

Q. Will you mark, please, the position of your ship at the time that you blew the two whistles.

(Witness indicates on chart.)

Mr. Wright: Let's discard the diagram for the time being.

Mr. Farwell: No, if the witness wishes to use the diagram he is entitled to use it.

Mr. Wright: If the witness says that it is necessary for him to use this diagram in order to mark the chart, I have no objection whatever to his doing it. Do you find that necessary, Captain?

The Witness: Yes, it is necessary.

Mr. Wright: You would have to have that diagram before you in order to mark this chart now to indicate the positions?

The Witness: Well, I can do it without it, but I would like to have it.

Mr. Wright: You say you can do it without it?

The Witness: Yes.

Mr. Wright: Then that permits me to toss it aside.

Mr. Farwell: No, I disagree with that.

[fol. 206] Mr. Wright: I ask Mr. Farwell not to show the witness the diagram while he is marking the chart.

Mr. Farwell: Temporarily I will put the diagram to one side.

Q. Now, you have indicated the position of your ship when the two whistles were blown by you, and I have marked that "two whistles." Now, will you please sketch in the course of your ship from the point where you stopped the engines, up to the place of the collision.

(Witness does as requested.)

Q. You said that after you blew the two whistles, you heard four blasts from El Isleo. Is that correct?

A. That is right.

Q. Will you mark on the chart the position of your ship when you heard the four blasts from El Isleo.

(Witness does as requested.)

Q. How soon after hearing those four blasts did you reverse your engines?

A. Immediately.

Q. Does this point indicate also the position your ship was in when you reversed the engines?

A. Yes, it does.

Mr. Farwell: I will mark that with a leader and "engines reversed."

Q. Going back to the time when you first saw the lights of El Isleo and stopped your engines, whereabouts do you

[fol. 207] think El Isleo was at the time you first saw her and stopped your engines? Will you mark it on the chart.

(Witness does as requested.)

Mr. Farwell: The witness marks a cross and I put a leader with "El Isleo when first seen."

Q. What was the position of El Isleo at the time you blew your two whistles to her?

A. She was right along in here (indicating on chart).

Mr. Farwell: I will put a circle around that and mark it "El Isleo when Eastern Glade blew two whistles."

Q. How far from you was El Isleo when she blew the four whistles and you reversed?

A. About three ship lengths.

Q. And what do you call a ship length?

A. That would be—our ship is 400 feet long.

Q. And at that time, how did she bear from you?

A. She was about four points abaft abeam.

Q. That is four points abaft your beam?

A. Yes.

Q. Which beam was that?

A. The starboard beam.

Q. At that time—that is when El Isleo blew the four whistles—could you tell whereabouts in the channel, with reference to the ranges, El Isleo was?

A. Yes, I could tell she was west of the ranges.

Q. Had you observed before that time that El Isleo was to the westward of the range?

A. No.

[fol. 208] Q. Were the vessels close enough together for you to tell that?

A. No.

Q. At the time of the collision what was the speed of your ship?

A. You mean when they——

Q. When they actually came together.

A. Our ship was stopped—dead in the water then.

Q. Was she stationary or was she swinging in one direction or another?

A. Her bow was swinging to starboard.

Q. And what caused the bow to swing to starboard?

A. Backing, and as the right wheel paddled the stern around.

Q. Did you observe any reduction in speed, any slowing down by El Isleo?

A. No, I did not.

Q. At the time of the collision, how fast do you think El Isleo was going?

A. About 10 knots.

Q. How did the vessels separate?

A. You mean after the accident?

Q. After the accident.

A. They hit like this and the stern came in (indicating).

Q. Indicating that the stern of El Isleo swung to port?

A. Swung to port, then she went off to the westward of the range line.

Q. Before the collision, had you seen buoy 7-M?

A. Yes.

Q. Where was your ship with reference to that buoy at the time of the collision?

Mr. Wright: If you know.

A. She was about 25 to 50 feet off the buoy, and the buoy was about abreast of No. 4 hatch on the port side.

[fol. 209] Q. At the time of the collision, had you completed your swing so that you were heading up on the line of the ranges——

A. No.

Q. (Continuing.) —of Fort McHenry Channel?

A. No.

Q. Do you know what the heading of your ship was at the time of the collision?

A. No.

Q. Can you give us any idea as to what it was?

A. Yes, it was a little west of north.

Q. You didn't look at the compass?

A. No.

Q. What part of your ship was struck by El Isleo—that is, what was the first point of contact?

A. The first point of contract was the bow.

Q. What part of the bow?

A. The stem.

Q. Will you put these two models in the positions in which the vessels were at the first contact.

(Witness places models.)

A. At that angle.

Q. Is that about the angle?

A. Yes, that is about the angle, yes, sir.

Q. You have indicated that the point of collision on the El Isleo was approximately halfway between amidships and the bow, is that about correct?

A. Yes, that is correct.

Q. Right after the collision, did your bow scrape along the side of El Isleo?

A. Evidently scraped alongside part of the way, and El Isleo came into our side.

Mr. Farwell: I offer the chart in evidence.

[fol. 210] (It is marked Eastern Glade Exhibit 9.)

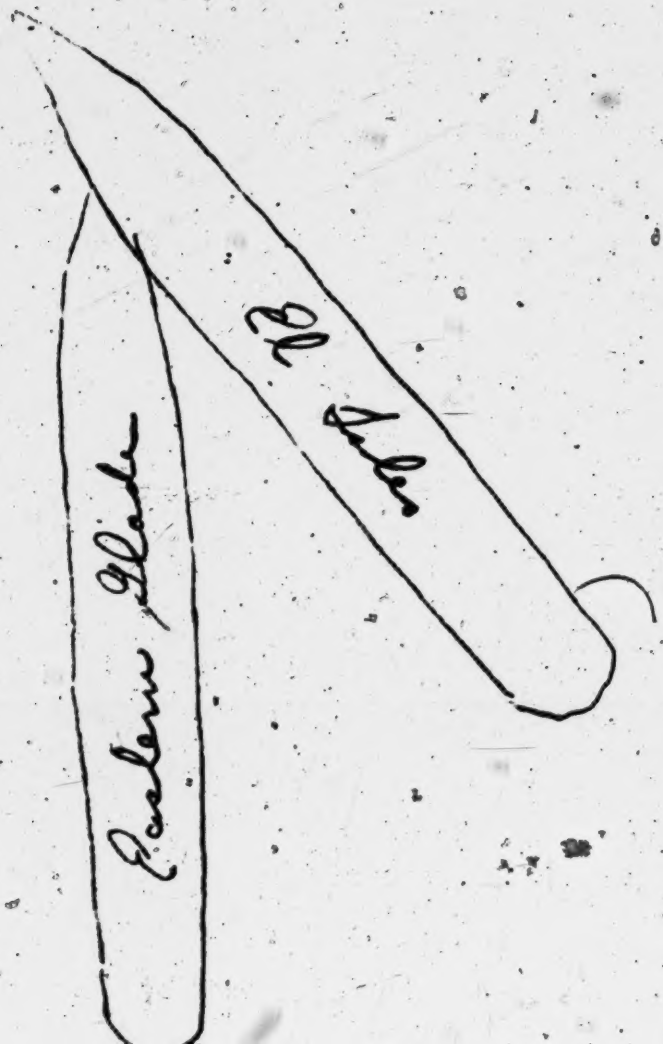
Mr. Farwell: I offer the diagram made by the witness in evidence.

(It is marked Eastern Glade Exhibit 10.)

(Here follows one photolithograph, side folio 210a.)

EASTERN GLADE EX. No. 10. 210a

Eastern Glade
Ex. 10
Mch 18/36
Nat



Q. Captain, did you have any trouble with your engines on the day of the collision?

A. No.

Q. Did you have any difficulty with your steering gear?

A. No.

Q. Your ship is a single screw ship?

A. Single screw, yes.

Q. An oil burner?

A. An oil burner.

Q. What kind of steering gear have you?

A. It is a chain steering gear with the steering engine amidships.

Q. Where is the engineroom telegraph, with reference to the wheelhouse?

A. It is on the outside starboard about 10 feet from the wheelhouse, out on the bridge.

Q. The bridge runs the full width of the ship?

A. That is right.

Q. Captain, there has been considerable comment made because there were a large number of bells given from the time you left the dock up until the time of the collision——

Mr. Wright: Confine it to the time he got into Curtis Bay Channel.

Q. (Continuing.) You testified that at 5.20 you had gotten out by Ferry Point?

A. That is right.

Q. What was the occasion for giving the number of signals to the engineroom from 5 o'clock when you got under way [fol. 211] up until 5.20?

A. It was to maneuver the ship around—turn around—rock her around.

Q. How about while you were coming out of the narrow cut, backing out of the narrow cut from the phosphate dock?

A. That is what you just asked me—from there until 5.20.

Q. I mean when you left the dock, you have to back out through this cut?

A. That is right.

Q. How did you keep the vessel on a straight course while she was going astern?

A. Kick her ahead half a minute, hard left rudder, and then come on here (indicating)—just trying to keep sternway.

Q. After you got straightened out at 5.20, I notice here (indicating bellbook) two occasions you stopped, one at 5.24 and another at 5.27. Do you recall why you stopped your engines?

A. Yes, at 5.24 there when I stopped, I was looking for those buoys. It was getting dark then.

Q. How about the other stop later on, do you remember —you may look at the bellbook.

A. No, I don't remember.

Q. Later on there was a signal sent down to the engines for full speed astern.

A. Yes.

Q. And then you went full speed ahead, according to the engineroom, a minute or a minute and a half later, do you remember that?

A. Yes.

Q. What was the occasion for that?

A. She was getting over to the northward side of the range line there, and I knew Nun Buoy No. 4 was there, and didn't have a light on it, so I kicked her back to throw her stern to northward, to get her back on the ranges.

[fol. 212] Q. Had you ever been in a collision before?

A. No, sir.

Q. When you started to make the turn to go up into Fort McHenry Channel, on which side of Fort McHenry Channel did you intend to proceed?

Mr. Wright: Objected to as leading and immaterial.

A. You mean at what particular time?

Q. You were coming out of the Curtis Bay Channel, you were going to turn up the Fort McHenry Channel?

A. Yes.

Q. Tell me what course you were laying.

A. I was laying a course to go up the channel at the time, on the westward side of it.

Q. Was there room enough on your starboard side for a ship like El Isleo to pass up clear of you?

A. Yes, plenty.

Q. Well, how is it then that El Isleo came into collision with you?

A. That I can't answer.

Q. Was El Isleo on the starboard side of the channel when the collision happened?

A. Yes, she was.

Q. El Isleo was on the——
A. Starboard side.
Q. On the starboard side?
A. On the port side—the westward side of the range.

Mr. Wright: I ask the reporter to read the question and Mr. Farwell's interjection after the witness had answered the question.

(Question and answers repeated.)

Q. That isn't entirely clear, Captain. On which side of the channel was El Isleo at the time of the collision?
[fol. 213] A. She was on the westward side of the channel.
Q. If she had been on the eastern side of the channel, would there have been any collision?
A. No.
Q. If El Isleo had reversed her engines at the time she blew the four blasts to you, would there have been any collision, in your opinion?

Mr. Wright: Objected to.

A. No, there wouldn't have been.

Cross-examination.

By Mr. Wright:

Q. Where are these ranges that you were steering by?
A. Which ranges are you referring to now?
Q. The ones you were steering by coming out of Curtis Bay Channel.
A. On the westward end of the channel.
Q. Astern of you?
A. Astern of me.
Q. Where were you standing on the bridge?
A. When I was running the ranges?
Q. Yes.
A. On both sides.
Q. Back and forth?
A. Back and forwards across the bridge.
Q. What orders were you giving to the helmsman?
A. It was "right," "left" and "steady," as I got her on the ranges.
Q. Between 5.20 and 5.34, about how many helm orders do you suppose you gave to the helmsman?

A. I couldn't answer that.

Q. During that interval, were the only orders you gave him "right," "left" and "steady"?

A. That is right.

[fol. 214] Q. Did you ever give him a compass course?

A. Well, when I told him to steady, then he would take his course off the compass.

Q. Do you know that he took his course from the compass or do you just assume that?

A. No, I know that.

Q. How do you know that?

A. Because that is the practice.

Q. How long had he been with you?

A. He had been with me at that time—I don't remember when I shipped him.

Q. Was there anything ahead for him to steer by?

A. Oh, yes, there is lights ahead he can steer by.

Q. Any fixed lights?

A. No—flashing red buoy to steer by.

Q. Is it easy to steer by a flashing buoy?

A. Naturally.

Q. He testified the other day he would never steer by a flashing buoy. Do you think that is due to his inexperience?

A. Why no.

Q. You say it would be quite all right to steer by a flashing buoy?

A. Yes, a quick flashing buoy.

Q. You didn't tell him to steer by any flashing buoy?

A. No.

Q. All you gave him was "right," "left" and "steady"?

A. Yes.

Q. And then you believe, because it is a custom, that he took his steady course from the compass?

A. Yes.

Q. Are those ranges astern of you easy to see at dusk?

A. Yes.

Q. No trouble at all seeing them?

A. No, was no trouble seeing them.

[fol. 215] Q. It was perfectly clear weather?

A. It was clear.

Q. No clouds?

A. Partly cloudy.

Q. Isn't it a fact that it was perfectly clear?

Mr. Farwell: You mean overhead or the visibility—the atmosphere?

Mr. Wright: I guess the captain understands me.

A. It was partly cloudy, but the visibility was good.

Q. Did you tell the Local Inspectors it was perfectly clear?

A. I didn't—I said it was partly cloudy.

Q. Page 9 (testimony before the Local Inspectors). I read you this question and answer, and ask you if you answered as this transcript shows:

"Q. How was the weather at the time of the collision?

A. Perfectly clear, with *with* northerly wind."

—. Did you so testify?

A. I don't remember that question before the Inspectors.

Q. Have you read over this testimony before the Inspectors?

A. No, I haven't.

Q. You have no recollection of what you did testify down there?

A. A few things, yes.

Q. But you haven't read—have never read this transcript of your testimony?

A. No, sir, I have not.

Q. How were your engines going at the time El Isleo blew the danger signal?

A. Stopped when the whistle was blown.

[fol. 216] Q. Did you stop the engines when you heard his danger signal, or had they been stopped before?

A. They had been stopped before.

Q. So that at the time you heard the danger signal, your engine was already stopped?

A. Stopped.

Q. Did you answer his danger signal?

A. Yes, with full speed astern and a backing signal.

Q. Your full speed astern hasn't anything to do with answering his signal, has it?

A. I answered his signal with a backing signal.

Q. You answered his danger signal with a backing signal?

A. I did, yes, sir.

Q. I read from your testimony before the Inspectors, page 9:

"Q. What did you immediately do when you heard the danger signals from the El Isleo?

A. I immediately answered his danger signals and put my engines astern."

Did you so testify?

A. That is what I just told you.

Q. You now say you answered his danger signals with a backing signal?

A. Certainly, that is answering it.

Q. As I read this answer, doesn't it indicate that you blew four blasts to the El Isleo?

A. No, sir.

Q. At least one of the men from the Eastern Glade testified the other day that she blew four blasts. Are they wrong in that?

Mr. Farwell: I object to the question as improper.

[fol. 217] Mr. Wright: In what respect?

Mr. Farwell: Improper cross-examination. You know as well as I do.

Q. We will have to try to reconcile your testimony with the testimony of these other witnesses who told about four blasts. Now, which is correct?

Mr. Farwell: I object to the statement that it is necessary to reconcile the statements of witnesses. It is well known that statements of witnesses frequently differ, and it isn't necessary to reconcile them at all.

Q. Isn't it possible, Captain, that you blew four blasts or three blasts and one blast after hearing El Isleo's four blasts?

A. No, I blew three blasts.

Q. I read you further from your testimony before the Inspectors:

"Q. How was your engine working at the time that he blew danger signal?

A. Full speed ahead."

Is that correct?

A. No.

Q. Did you so testify before the Local Inspectors?

A. I don't remember it.

Mr. Wright: Will you stipulate, Mr. Farwell, that I have correctly read the excerpts from this testimony before the

[fol. 218] Inspectors, as they appear in the transcript?

Mr. Farwell: Yes.

Q. At the time of the collision, your bow was swinging to starboard, and the other ship's stern was swinging in toward your starboard side, is that correct?

A. That is correct.

Q. Could you tell how much El Isleo had changed her course?

A. I couldn't tell.

Q. Did her stern seem to be swinging in toward you fast or very slowly?

A. Well, I can't remember that, I didn't notice that much.

Q. Did you get the impression that it might be her stern that would be hitting you instead of her amidships?

A. No.

Q. Could you tell how much your bow swung to starboard before the collision—answer yes or no.

A. No, I couldn't tell.

Q. That is, you were not watching it closely enough to judge that?

A. I was watching the other ship—I mean watching the contact.

Q. That seems natural enough to me. That is, you would be riveting your attention on the other ship, is that correct?

A. No.

Q. What else were you looking at besides the other ship?

A. The ranges.

Q. Were the ranges going to help you avoid collision?

A. No.

Q. Did you give any orders to the man on the forecastle head to look out for himself—get away if there was danger?

A. No, I didn't give him orders.

Q. Did you turn in any alarm?

A. No alarm.

[fol. 219] Q. Why were you looking at the ranges?

A. Watching the position of the ship and at the same time watching the other ship.

Q. So that you would be in a position to come here and testify as to what the ranges were?

A. No.

Q. Was it of any importance for any other purpose?

A. Watching the navigation.

Q. The navigation, a little earlier in the game, is what counts, isn't it—after you get in a position like that, your engines going astern and the vessels in close proximity, the ranges don't make much difference, do they?

A. No, they don't make much difference.

Q. The impact swung your ship's bow around to port, didn't it?

A. Around to port, yes.

Q. Several points—she being a light ship?

A. Yes.

Q. And even so, El Isleo was swinging her stern over so that your bow raked aft a little ways on her side, didn't it?

A. I didn't understand that.

Q. Didn't you rake off a lifeboat davit or something on El Isleo?

A. I don't know.

Q. You didn't observe that?

A. No.

Q. Your ship swung rather quickly to port at the time of the impact?

A. Slow.

Q. Very slow?

A. Yes.

Q. Isn't it a fact, Captain, that until the collision occurred and the ships cleared each other, you were paying strict attention to the point of contact, and before that the probable point of contact rather than to anything else?

A. The point of collision—I can't answer that.

[fol. 220] Q. Isn't it also the fact that you probably first observed Eastern Glade's heading as of sometime after the ships cleared?

A. No.

Q. Do you think that you can give us the headings at the various moments between the time you left the Curtis Bay ranges and started swinging around, and right up to the time of the collision—give us the heading at the moment of the collision and then her heading after the Eastern Glade swung to port and the ships cleared?

A. No, I cannot give you those headings all the way down—the courses.

Q. But you think you can give the heading at the moment of impact?

A. At the moment of impact?

Q. Yes.

A. No.

Q. At sometime after the collision, you observed that the Fort McHenry ranges were in such a position that you judged your heading to be a little west of north?

Mr. Farwell: I object to that question, that is not what the witness testified to. The witness testified——

Mr. Wright: Let's not tell the witness what he should testify to.

Mr. Farwell: If you are going to refer to his earlier testimony, then please state it correctly.

Q. At sometime after the collision, did you observe that the Eastern Glade was heading a little west of north?

A. It was just about the time of collision.

Q. I thought you said you couldn't give us her heading at the time of collision.

[fol. 221] A. I said it is approximately west of north, a little west of north.

Q. But you said a moment ago that you couldn't give her heading at the moment of impact, is that correct—can you give us her heading at the moment of impact?

A. I said no.

Q. Can you give us her approximate heading a minute after the impact?

A. No.

Q. Can you give us her approximate heading two minutes after the impact?

A. No.

Q. Can you give us her approximate heading half a minute before the impact?

A. No.

Q. And you can't give us her approximate heading at the moment of impact?

A. Yes—a little west of north.

Q. So that during that interval of approximately two and a half minutes, you can only give us her heading at the time of the impact?

A. Right.

Q. So that at the time of the impact, you were paying more attention to your ship's heading than you were immediately before that and within the two minutes after that?

A. No, I wasn't paying any attention to the ship's heading at all before that.

Q. That is, you weren't paying any attention at all to your ship's heading until the moment of impact?

A. Yes.

Q. That is correct?

A. That is correct.

Q. And at the moment of impact, if I have understood you correctly, you were concerned principally with the point of contact—am I correct in that?

A. You ask me compass courses now?

Q. No, sir. I am not asking compass courses at all. I am [fol. 222] just asking headings at various times.

A. What is the last question again?

Q. (Repeated.) And at the moment of impact, if I have understood you correctly, you were concerned principally with the point of contact—am I correct in that?

A. Yes.

Q. Then, how does it happen that when things were just the most exciting, you observed the ship's heading, whereas, before and after that time, you didn't observe the heading?

A. Are you still talking compass courses?

Mr. Farwell: I object to the question on the ground that it is misleading, because the captain has not testified that he observed the compass heading of the vessel. The witness obviously doesn't understand the question. You are speaking about approximate headings and the captain is trying to testify regarding compass headings.

Mr. Wright: It is the best way to tell a heading, as near as I can tell it, and when he says a little west of north he gives a very definite answer.

Mr. Farwell: It might be anything within three points.

Q. Captain, if you were heading three points west of north, what would be your heading?

A. Northwest by north.

Q. And if that had been your heading, you would have probably said a little north of northwest, or by northwest by north, wouldn't you?

A. Probably would, yes.

[fol. 223] Q. And when you say a little west of north, you mean that she was somewhere between north and north by west, don't you?

A. North and north by west, yes.

Q. You see the purpose of my questions, and that is, I am suggesting to you that the time you observed your heading as a little west of north was at sometime after the colli-

sion, perhaps not long after; but after you took your eyes off the point of contact, and realized that the ships were clearing and that there was no further immediate and serious danger?

A. After the collision there was any immediate and serious danger?

Q. After the ships cleared?

A. After the ships cleared, there was no more danger.

Q. And isn't that the time that you observed the heading of your ship?

A. No. You are still talking compass courses?

Q. No, I am talking heading—your course when you are coming around the bend, is altering or rather it is rounding so that your heading changes from moment to moment. There is no purpose in talking courses when you are on a rounding course, but you can give us approximate headings at various times, perhaps. Now, when was it that you observed that your ship was heading a little west of north?

A. At the time of the accident.

Q. At the very moment of impact?

A. Yes.

Q. And you are positive that that wasn't a minute or two later?

A. No, I wouldn't answer that.

Q. In other words, you can't be positive?

A. No.

[fol. 224] Q. And it might have been a minute or two later and you can't say right now which it was, is that correct?

A. That is correct.

Q. You first observed El Isleo about four points on your starboard bow?

A. Right.

Q. At about what distance?

A. You mean distance from me?

Q. Well, I guess we can figure it from the chart.

A. Yes—about a mile.

Q. And about how far off was she when you blew her the two blasts?

A. About a quarter of a mile.

Q. You are familiar with the Pilot Rules?

A. Yes.

Q. And one of those rules requires you to sound passing signals when you are within half a mile of the other vessel?

Q. Do you think that, notwithstanding that rule, you waited until she was within about a quarter of a mile—don't bother to watch Mr. Farwell figure this out on the chart, Captain.

A. Well, in that one position where I was at, a quarter of of a mile was sufficient.

Q. You don't observe this half-mile rule very carefully?

A. I do.

Q. Except on this occasion?

A. This one occasion, yes.

Q. And your ship was moving ahead through the water when you blew the two blasts?

A. Yes.

Q. And the other ship was moving ahead?

A. Right.

Q. And you were on crossing courses?

A. No.

Q. If you were to project a line on your heading, at the [fol. 225] time you blew the two-blast signal, and project another line on the other ship's heading up the channel, wouldn't those lines cross?

Mr. Farwell: Objected to on the ground that it doesn't state the situation correctly, because the Eastern Glade was going to change her course, was engaged in changing her course at the time the two-blast signal was blown.

Mr. Wright: I will abandon this question only because it is self-evident that the two lines would cross.

Q. But to make sure of it, Captain, I will ask you again—would those lines have crossed?

Mr. Farwell: You mean if the other vessel had changed course?

Mr. Wright: The question, I think, is quite plain.

A. When I blew the two whistles I was swinging to starboard—no, the two lines wouldn't cross.

Mr. Farwell: Swinging in which direction, Captain?

The Witness: I was swinging to port.

Q. You were swinging under a starboard helm, is that what you mean?

A. I was swinging under a left rudder, yes.

Q. But you said you were swinging to starboard, and [fol. 226] I was wondering if that was just the reverse of the starboard helm.

A. You mean the old starboard and port system?.

Q. Yes.

A. No, I don't use it, I abolished it.

Q. When did you abolish it?

A. A year ago.

Q. Have you had any trouble with it?

A. No.

Q. No trouble in shifting from the old to the new commands?

A. No.

Q. If those lines wouldn't have crossed, your ship must have been heading parallel with the Fort McHenry Channel?

A. No. They wouldn't cross because I was swinging on a left rudder, didn't intend them to cross.

Q. The line I spoke of was one drawn from your heading at the very moment you blew the two blasts, going straight ahead of your then heading, without regard to any subsequent change in your heading.

Mr. Farwell: I object to the question as wholly immaterial and as presenting an impossible situation, in view of the known intention of the two ships.

Q. Known to whom—there are anchorages over across that channel, aren't there?

A. No, no anchorages across the channel there.

Q. Ships do anchor in there occasionally, don't they?

A. I have never seen one anchored there, no.

Q. There is an anchorage on the westerly?

A. Quarantine anchorage, yes.

Q. With your draft it wasn't necessary for you to come out around N buoy No. 2 and flashing white buoy 7-M?

[fol. 227] A. No, with my draft it wasn't necessary to come out around there, but it is the proper procedure.

Q. Even though there is another ship coming up the channel?

A. Surely.

Q. And even though, in that ship's position, she is going to be abreast the buoy 7-M about the same time you are?

A. Didn't expect her to, didn't expect her to be there the same time I would.

Q. What did you expect her to do?

A. Stay on the right side of the channel.

Q. Did you expect her to stop and back?

A. No, I didn't expect them to back then, but when he saw there was going to be a collision, I expected him to back.

Q. But as you saw it, you were going to come out into Fort McHenry Channel about abreast of buoy 7-M at about the same time that he would arrive at a position abreast of 7-M?

A. No.

Q. Which was going to arrive there first, according to your calculation?

A. The S.S. El Isleo.

Q. So that you would enter the channel and follow up astern of him?

A. Right.

Q. And you would naturally expect, as you were going up this channel, that something might be coming down and you would keep over on your starboard side of the channel?

A. That is the proper procedure.

Q. Well, according to your calculations, El Isleo would have gotten up to 7-M before you got out in the channel, and there would be no trouble at all?

A. That is what I expected.

[fol. 228] Q. But it turned out that you got up there just about the same time he did?

A. Yes.

Q. So that either he must have slowed or stopped his engines, or else your speed must have been greater than you thought it was?

A. No.

Q. Then, what do you think upset your calculation?

A. Darkness.

Q. It was just a miscalculation?

A. Miscalculation.

Q. But you had no intention of doing anything except holding back and letting him go on up the channel and fall in astern of him and you go up?

A. Right.

Q. At any time, did you have any intention of doing otherwise?

A. No.

Q. Not even when you blew the two blasts?

A. No, I had the intention of doing the same thing.

Q. Why did you blow two blasts?

A. To indicate I was directing my course to port.

Q. In what situation, according to the Pilot Rules, were the vessels in at the time you blew the two blasts—crossing, meeting, overtaking or otherwise?

A. When I blew the two blasts—in an overtaking situation.

Q. And in an overtaking situation, the vessel ahead blows two blasts as a signal to the vessel astern to do what?

A. Well, it is to stay on his right side of the channel.

Q. Isn't that a signal to him that he can overtake and pass you on your port side?

A. No.

Q. If a vessel astern of you blows for permission to pass, by sounding a one-blast signal, and you answer with one blast, on which side will he pass you?

A. On his own port side.

[fol. 229] Q. He will leave you on his port side?

A. Yes.

Q. And that means he will pass on your starboard side?

A. Yes.

Q. That is one blast?

A. Yes.

Q. Now, if he blows two blasts for permission to overtake and pass you, and you answer with two blasts, he will pass on your port side, won't he?

A. Yes.

Q. So that if this was an overtaking situation, you were signaling to no other vessel than the El Isleo?

A. This isn't a passing signal, you know.

Q. Oh, it wasn't a passing signal?

A. It was two blasts to show the way I was directing my course.

Q. Are you thinking of the International Rules?

A. Yes.

Q. In the Inland Rules, where vessels are on crossing courses, and the vessel having the other on her starboard bow, sounds two blasts, what does that mean?

A. On her own starboard bow?

Q. Yes.

A. Am I being examined now by the Steamboat Inspectors?

Mr. Farwell: Answer the question if you can.

A. It means you are going to cross his bow.

Q. Don't you suppose that is the reason El Isleo answered your two blasts with a danger signal and one?

A. No, there is no reason that he should take that in this case.

Q. Why not?

A. Because it isn't an anchorage, I am not proceeding [fol. 230] to any place in here (indicating), and naturally when I gave him the two whistles it was to signify I was going up the channel, directing my course to port.

Q. It wasn't telling him to pass on your port side, was it?

A. It wasn't to tell him to pass on my port side, no.

Q. And it might easily have been interpreted by him to mean that you were coming out into Fort McHenry Channel and you wanted him to hold back and let you go?

A. I didn't intend it that way.

Q. But isn't that a reasonable interpretation of that signal?

A. No, I don't think so.

Q. I don't see, Captain, under the Inland Rules how that whistle could be construed by the men on El Isleo as otherwise than a passing signal, do you?

A. Yes. If I gave it to him for a passing signal, we have to run across his bow.

Q. When you heard his danger signal and one blast, how did you interpret those signals?

A. Danger, something wrong on board ship, and I put my engines full astern.

Q. Something wrong on board his ship?

A. I thought so, yes.

Q. You hadn't observed anything unusual about her?

A. No.

Q. You say that you didn't observe her slacken speed any?

A. No.

Q. And she proceeded on her course up the channel?

A. No.

Q. That is what you reported to the Local Inspectors, wasn't it?

A. You mean before the accident or after?

Q. When he blew the one blast after the four blasts.

[fol. 231] A. No, he was to the westward side of the channel.

Q. He altered his course over to the westward?

A. I couldn't tell you which way he altered course.

Q. You made the cross mark here on this chart (Eastern Glade Exhibit 9) to indicate her position at the time you first saw her, and the cross comes right on the range—that is in the center of the dredged channel?

A. Yes.

Q. The next mark you put to indicate her position when you blew two blasts, you put her over on the westerly side of the channel?

A. Yes, I did.

Q. But you reported to the Inspectors, "He then gave one long blast and proceeded on his course up the channel," did you not?

A. That is correct—one long blast and proceeded on up the channel ~~into~~ me.

Q. Was there anything about his course at the time you blew that one blast to indicate there was anything wrong on his ship?

A. He was heading right down on me all the time.

Q. I wonder if it wouldn't be better to express it that you were heading across his course all that time—at that particular moment wasn't your heading something considerably east of north?

Mr. Farwell: At what time are you speaking of now?

Mr. Wright: At the time of the one-blast signal by El Isleo.

A. I don't remember that course.

[fol. 232] Q. That is, you don't remember your exact heading at that moment?

A. That is correct.

Q. Isn't it pretty hard to judge, Captain, when you are over a little to westward of Fort McHenry Channel and he is a quarter of a mile down Fort McHenry Channel, whether he is right on the ranges or on one side or the other of a 600-foot channel?

A. No, I think it is very easy to judge that.

Q. Did you observe any change in the course of El Isleo up to the time you say that her stern began swinging over towards you?

A. I can't understand that question.

Q. Well, up here some place you have expressed the view that her stern was swinging towards you at the moment of collision.

A. Yes.

Q. That would mean her bow would be going off to starboard?

A. Right.

Q. Now, she must have been changing her course to do that, or that is, she must have been on a rounding course?

A. She probably was.

Q. And up to the time you first observed that she was swinging to starboard, which I take it wasn't long before the collision——

A. When she was swinging to starboard?

Q. Yes.

A. Before the collision, no.

Q. Then up to that time that you first observed that swing, had you observed any change?

A. This swing I am talking about is at the accident—right at the time of the contact.

Q. You can say when you observed that swing, can't you?

A. Yes.

Q. Then we will start 30 seconds before you observed [fol. 233] that swing. Then, we will take the time going backwards from that 30-second interval.

A. Kindly straighten me out, please, on what you are working on now?

Q. All right. Between the time El Isleo was abreast of buoy 6-M, and the time when she was three-quarters of the way up to buoy 8-M, did you observe any change in her heading or course?

A. No.

Q. So far as you know, when she was three-quarters of the way up to buoy 8-M, from 6-M, she was in the same position with reference to the side of the 600-foot channel as she had been when you first observed her?

A. You are talking about the ship being over on this side of the channel, and I have got her over on the westward side.

Q. You have got her over on the westward side on this diagram, that is true. Now, what I am getting at is, you saw no change of course in this position which you have indicated with a cross and a circle around it, and the position which you have indicated with a straight line with a circle around it. How do you think she got over to that position unless she changed her course?

A. I can't answer that.

Q. And my suggestion is that you don't know whether she was on the westward side of the channel at that time——

A. I do know.

Q. Notwithstanding your report to the Inspectors that after her one-blast signal, she proceeded on her course up the channel?

A. Right, she proceeded on her course up the channel into me.

[fol. 234] Q. Do you think El Isleo came over on the west side of the channel on purpose to run into you?

A. Why, no.

Q. Did it look to you that it did that?

A. Why, no.

Q. All he had to do to avoid collision, in your opinion, was alter his course to starboard?

A. Right.

Q. And if he had done that, he would have been doing just the right thing under the circumstances?

A. Yes.

Q. What navigation rule applied to the two vessels when you first observed the other ship and began navigating with reference to her?

A. Well, to stop and back.

Q. That is, the burdened vessel stops and backs, if necessary?

A. If necessary.

Q. And the privileged vessel keeps her course and speed?

Mr. Farwell: I object to counsel adding to the witness's statement. The witness didn't say anything about a burdened vessel or a privileged vessel, and hasn't said anything about any right-of-way.

Mr. Wright: Do you object to my leading?

Mr. Farwell: I object to your framing your questions so as to include statements the witness doesn't make.

Mr. Wright: Notwithstanding the fact that he agrees with them?

Mr. Farwell: That is the reason I object to the question, because it is misleading.

[fol. 235] Q. I don't think Mr. Farwell wants you to admit this, Captain: But isn't it a fact that the starboardhand rule applied from the time you first observed the other ship?

A. The starboardhand rule?

Q. Yes.

A. Well, make yourself a little more clear, please. I don't just understand.

Q. The rule which says a vessel having another on her starboard bow shall keep out of the way, and if necessary stop and back——

A. That is true.

Q. (Continuing.) —and the other vessel having a vessel on her port bow is the privileged vessel and shall keep her course and speed?

Mr. Farwell: I object to the question on the ground that that is a question for the Court to decide, and on the further ground that the vessels were not on crossing courses but that the Eastern Glade was going to change her course to port, and the courses would not cross.

Q. You see why I told you that I didn't think Mr. Farwell would want you to admit that. I will read you from the Navigation Rules, Article 19: "When two steam vessels are crossing, so as involving risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other." Article 21, "Where, by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed." Article 22, "Every vessel which is directed by these rules to keep out of the way [fol. 236] of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other." Article 23, "Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse." Isn't it true, Captain, that those are the rules that apply to the situation that you found yourself in with El Isleo when you first observed her?

Mr. Farwell: Same objection.

A. No.

Q. That is not the rule?

A. No.

Q. And it wasn't the overtaking rule that applied?

A. No.

Q. Can you point out to me in these rules the rule which did apply to that situation?

A. No.

Q. You would say there isn't any navigation rule applicable to the particular situation existing on this occasion?

A. No.

Q. That is there is no such rule?

A. I would say no.

Q. You gave an estimate as to the position of the flashing white buoy at the time of the collision. Isn't it a fact that your estimate of that buoy's position is based upon observations made at sometime prior to or subsequent to the collision?

A. You mean the position of the buoy?

Q. Yes.

A. My position that I gave to the buoy?

Q. My point is this: That at the moment of impact, you were concentrating upon the point of contact and not taking bearings of buoys?

A. No, I did not take bearings at the time.

[fol. 237] Q. You had previously observed that buoy?

A. Right.

Q. And isn't it a fact that your estimate of the position of that buoy at the time of the collision is a mere guess?

A. No.

Q. How could it be otherwise if you didn't see the buoy at the moment of the impact?

A. No, I did not take any bearings.

Q. Then, isn't it a fact that that is just a guess?

A. No.

Q. If you didn't take any bearings, how do you know the position of the buoy at the moment of impact?

A. I knew it.

Q. How did you know it?

A. Just passed it.

Q. You had left it on your porthand?

A. On my porthand, right.

Q. How long before the collision, can you say?

A. I passed the buoy?

Q. Yes.

A. A matter of seconds.

Q. Less than a minute?

A. Yes.

Q. Less than three-quarters of a minute?

Mr. Farwell: I object to attempting to pin a witness down to a matter of three or four seconds or fifteen seconds.

Mr. Wright: I don't ask him to estimate it within three or four seconds at all.

Mr. Farwell: You asked him to differentiate between a minute and three-quarters of a minute. I think the question is objectionable.

Mr. Wright: If the witness can't answer, I have no objection whatever to his saying so.

[fol. 238] Q. Can you say whether it was less than three-quarters of a minute?

A. No.

Q. Had you altered your course to port before you sounded the two-blast signal?

A. Yes, she was on a port wheel then, when the two blasts were sounded.

Q. You sounded that signal to tell the other ship you were altering your course to port?

A. Right.

Q. Wouldn't you tell him that under the International Rules at the same moment as you began to alter your course?

A. Yes, that is the International Rules.

Q. But if you wait until after your wheel is already hard over, isn't your signal a little late?

A. No, they are both about the same time.

Q. And that is, as you were approaching this buoy N-2?

A. Yes.

Q. Did the third mate consult with you before writing up the rough log?

A. Yes.

Q. And you told him what you thought would be an appropriate entry in the log?

A. No, I told him to put it down as the accident happened.

Q. Did he show you what he had written on the scratch pad?

A. I don't remember that.

Q. Does he ordinarily make a record of the orders on the telegraph in a notebook?

A. Yes, he does.

Q. That is a small notebook he can carry in his hand or in his pocket?

A. Yes.

Q. You have always kept one of those?

A. Pretty well, yes.

Q. Using one of those, there is no occasion to use a scratch pad, is there?

[fol. 239] A. He had a scratch pad or a notebook all the time, he either had one or the other.

Q. And then if he had a scratch pad, he would write out what he considered an appropriate entry for the log, wouldn't he, on that scratch pad, and show it to you?

A. No, not necessarily.

Q. Did he on this occasion?

A. No.

Q. You are sure?

A. I am pretty sure, yes.

Q. You didn't see what was in the log or know what he was going to put in the log until after he showed it to you?

A. After he gave me the logbook.

Q. Your ship is under enrollment?

A. Yes.

Q. What did you discuss with the mate when he came up on the bridge?

A. About docking.

Q. Was that necessary to discuss with the mate—he wasn't licensed for that harbor, was he?

A. Oh, yes.

Q. Was it necessary to discuss the method of docking, or was it time of docking or whether you needed towboats or some other matter that required discussion?

A. No, I told him I didn't know whether to go on the port or starboard side of the dock, and to have things ready for both sides.

Q. Is that all you had to tell him?

A. That is all I had to tell him.

Q. That only took a few seconds, according to his testimony he was on the bridge several minutes?

A. Sure.

Q. And you didn't tell him to go and stand by the anchors again?

A. Just before the accident, yes.

Adjourned sine die.

[fol. 240] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

POSTAL STEAMSHIP CORPORATION, as Owner of the Steamship Eastern Glade, Libellant,

against

STEAMSHIP EL ISLEO

Further deposition taken on behalf of the libellant, at the office of Messrs. Barry, Wainwright, Thacher & Symmers, 72 Wall Street, New York City, December 16, 1936.

Appearances:

Messrs. Barry, Wainwright, Thacher & Symmers (Mr. Farwell), for the Libellant.

Messrs. Burlingham, Veeder, Clark & Hupper (Mr. Clark), for the Claimant.

Same stipulation as heretofore noted.

HARRY ARTHUR STEWART, being duly sworn and examined as a witness for the libellant, testified as follows:

Direct examination.

By Mr. Farwell:

Q. What is your business, Mr. Stewart?

A. I have been for thirty-five years a surveyor to Lloyd's Register of Shipping.

[fol. 241] Q. You are a marine surveyor?

A. A marine surveyor.

Q. Are you familiar with repairs to ships?

A. That has been my business for thirty-five years.

Q. Just describe as briefly as you can what the duties of a marine surveyor are.

A. My duties as a surveyor to Lloyd's Register of Shipping, were to supervise the construction of the hull and machinery and equipment of vessels, and subsequently to survey them and to see that they were maintained in good and proper condition.

Q. When you use the word "survey," that means to examine them, does it?

A. Yes, a survey would consist of a thorough examination of the hull and the machinery of the vessel, and a recommendation for such repairs as were necessary to maintain her in good and seaworthy condition.

Q. In the case of a vessel suffering damage from any accident such as collision or stranding, did your work include a survey of the vessel—that is, an examination of the vessel—to ascertain the nature and the extent of the damage, and to determine the nature and the extent of the repairs that should be made to restore her to sound condition?

A. Yes.

Q. How old are you, Mr. Stewart?

A. Sixty-six and a half years.

Q. And you were surveyor to Lloyd's Register in Baltimore?

A. Yes, for twenty-six and a half years.

Q. From when to when?

[fol. 242] A. From 1907, July, to the 1st of June, 1933. I was in charge of the Baltimore office.

Q. Lloyd's Register is the British Classification Society?

A. I would like to correct the British—it is an International Classification Society with headquarters in London.

Q. And by Classification Society, you mean an organization that determines whether vessels are constructed and repaired in accordance with specifications?

A. That is hardly correct. They are built in accordance with the rules laid down by the society—our society—and to comply with the standards demanded for the various classes.

Q. The American Society corresponding to Lloyd's is the American Bureau of Shipping?

A. Yes.

Q. And the Norwegians have a similar society?

A. There is a Norwegian Society, German Society, the French have a society, the Italians and the Japanese have now a society, but Lloyd's Register classes just about one-half of the world's tonnage over one-hundred tons gross.

Q. What was your early training and experience, briefly?

A. Do you want me to start from——

Q. What was your first work? You were apprenticed——

A. At fourteen I won a scholarship under the British Admiralty, and served a seven-year apprenticeship as an apprentice in the Royal Navy Dockyard at Portsmouth, England. Subsequently, I served for two years in the drawing office and for the next seven years at sea in the engine-room of merchant vessels, holding a chief engineer's British [fol. 243] certificate. Then, in 1901, as I said before, I was appointed surveyor to Lloyd's Register of Shipping, served until placed on the retired list on the 1st of January, 1933, and accompanying the retirement I was subject to call, and am still holding surveys for the Society.

Q. I didn't ask you where your home is.

A. In Baltimore, Maryland.

Q. And you have come up here at my request to testify in this case?

A. Yes.

Q. You have surveyed a vast number of damaged vessels during your experience?

A. Yes.

Q. Can you approximate the number?

A. No, I started to check them up, but it was too long, it ran into thousands, and my curiosity gave out.

Q. In December, 1935, did you survey the steamship Eastern Glade at Baltimore?

A. I did.

Q. On what date did you examine the vessel?

A. On the 22nd of December.

Q. And where was she lying?

A. In the upper drydock of the Bethlehem Shipbuilding Corporation.

Q. Where?

A. At Baltimore.

Q. Did you prepare a report of survey?

A. Yes.

Q. May I have it, please?

A. This is a copy (producing paper). The original is in the possession of the owners.

Q. I haven't got the original. Were there other surveyors present at the time you made your survey?

A. Yes.

Q. Will you please state briefly what damage you found to the Eastern Glade—was there any damage to the bow?

A. Yes.

[fol. 244] Q. In general, what was it?

A. The stem from the turn at the bottom up to about the 28-foot draft mark was set over to port.

Q. Now, the stem is the very most forward part of the ship?

A. That is the extreme forward part.

Q. It is what some people call the cut-water?

A. Yes.

Q. And that was, you say, set over to port?

A. Yes.

Q. What do you mean by set over?

A. Bent over to port from the 28-foot draft mark down to the bottom of the stem where it turned under the bottom of the ship.

Q. To assist the Court, I asked you, Mr. Stewart, to prepare a sketch showing the starboard bow of the vessel. At

the right hand side of the sketch, the vertical line represents the stem, is that correct?

A. Yes.

Q. And going down this vertical line it turns and goes to the left, and that horizontal line at the bottom of the diagram is the bottom of the ship?

A. Is the keel, yes.

Q. Now, a ship is built up of plates of metal, is that correct?

A. Yes.

Q. And those plates are called—these tiers of plates are called what?

A. Strakes of plating.

Q. And the strakes are lettered, beginning where?

A. At the center line on the bottom.

Q. And each strake is designated by what kind of a character?

A. A letter, starting with the first strake from the center of the ship is the "A" strake, and so continues up to the top of the side, each strake taking the succeeding letter.

[fol. 245] Q. So that the "A" strake is next to the keel?

A. Yes.

Q. "B" strake would be the next one outside of that?

A. Yes.

Q. And "C," "D," "E" and so forth up until you come up to the bulwark of the ship?

A. Yes.

Q. What are the bulwarks of the ship?

A. The side plating proper of the ship terminates at the upper deck intersection with the side, and above that, for the safety of the crew, the bulwarks are raised about 3 feet 6 inches at the side of the ship as a continuation of the side, and sometimes these bulwarks are open rails and sometimes plated.

Q. The bulwarks are the uppermost part of the side structure of the ship?

A. Yes.

Q. Is it correct that each strake is composed of a number of plates?

A. Yes.

Q. And the plates are numbered how—where do you begin?

A. The upper one is joined to the stem.

Q. That is at the bow?
A. At the bow.
Q. At the forward end of the ship?
A. Yes.
Q. And No. 2 is the next one back of that?
A. Yes.
Q. In this drawing that you prepared for me, have you marked the strakes and the numbers of the plates?
A. The strakes showing the numbers of the plates are those which were damaged at the time of the accident.

Mr. Farwell: I offer the diagram in evidence.

[fol. 246] (It is marked Eastern Glade Exhibit 11.)

Q. Referring to Eastern Glade Exhibit 11, the top of the bow is at the point that I indicate?
A. Yes.

Mr. Farwell: I will mark that "Top of bow or stem."

A. That was the junction of the forecastle deck.
Q. The first strake that you have indicated is "K" strake?
A. Yes.
Q. The next one below that is "J"?
A. Yes.
Q. The next one below that is "H"?
A. Yes.
Q. Now, in "H" strake the plate that is adjacent to the bow—that is fastened to the stem—is No. 1?
A. Yes.
Q. The one that is back of that to the left is No. 2?
A. Yes.
Q. The one back of No. 2 is No. 3?
A. Yes.
Q. And the one back of No. 3 is No. 4?
A. Yes.
Q. Those four plates are all in "H" strake?
A. Yes.
Q. You have also indicated five plates in "G" strake?
A. Yes.
Q. Which is the next one below?
A. Yes.
Q. You stated that the stem was bent over to port.
A. Yes.

Q. I see a notation on the righthand side of Eastern Glade Exhibit 11, as follows: "Stem bent to port" with an arrow above and below the notation?

A. Yes.

[fol. 247] Q. Did the bending of the stem cover the distance indicated between the two arrows?

A. Yes.

Q. That was then from the lower part of "K" strake down to the turn of the stem at the bottom of the ship?

A. Yes, and at that point the upper part of the "A" strake, No. 1 plate.

Q. Was there any damage that you saw to the frames of the vessel toward the bow?

A. Yes.

Q. What are frames of a vessel—or a frame?

A. They are ribs of the ship to which the side plating is riveted.

Q. How far back of the stem was the first frame on the Eastern Glade?

A. About 20 inches.

Q. And the second frame was how far back of that?

A. 20 more inches.

Q. What was the damage to the frames around the bow of the Eastern Glade?

A. In the bending of the stem to port, the starboard bow plating stretched and bent to port, and the starboard bow frame No. 1 was drawn by the plate out of its place, and bent.

Q. You are now speaking of the starboard bow?

A. Yes.

Q. Were the frames bent to port or were they pulled to starboard?

A. Well, there were two movements of the frame, some parts of the frame had moved to starboard and some parts had moved slightly to port, depending on the amount that the plate was pushed out of its fair position.

Q. That applied to which frames?

A. The No. 1. The No. 2 frame was only slightly distorted from its original shape.

[fol. 248] Q. How about the frames on the port bow?

A. The No. 1 frame on the port bow was thrown inboard by the crumpling or bending-up of the plate attached to the stem.

Q. By "thrown inboard" you mean that was pressed in to the ship?

A. More to the starboard side.

Q. How about No. 2 frame?

A. No. 2 frame again was slightly distorted.

Q. Did you observe any other damage to the ship, in general?

A. At a point about 63 feet from the stem, the third plate in "H" strake was badly indented, and one frame set in.

Q. Did that indentation in No. 3 plate of "H" strake extend over No. 4 and No. 3 plates of "G" strake?

A. Yes.

Q. Will you please indicate where that indentation was?

(Witness indicates with a circle.)

Q. You have drawn a circle which I mark with a leader and the letter "A" on Eastern Glade Exhibit 11. Was there any other indentation, if so please indicate on this sketch where it was.

A. At a point 86 feet from the stem, the fourth plate in "H" strake, and the upper parts of the fourth and fifth plates in "G" strake were set in.

Mr. Farwell: I mark that area with the letter "B" on Eastern Glade Exhibit 11.

Q. When you say that a plate was set in, in ordinary language you mean it was dented?

A. Yes.

Q. It was not broken, it didn't have a hole in it?

[fol. 249] A. No. That fourth plate in "H" strake was not broken but it was very heavily indented alongside of two of the frames, and necessitated the renewal of that plate because of the sharpness of the dents alongside of the frames.

Q. At this time, Mr. Stewart, I don't want to go into all of the particulars of the damage, I merely want to get what you might call the highlights of the damage. Have you examined the survey and supplemental survey of El Isleo?

A. Yes.

Q. Is the paper that I show you the first survey or a copy of the first survey on El Isleo?

A. I have no knowledge whether it is the first survey or not.

Q. On what date does the survey state it was made?

A. Report of survey by the undersigned surveyor on the 20th of December, 1935.

Q. I show you a further report which is entitled "Report of supplemental survey on El Isleo" dated March 24, 1936. Have you examined that document as well as the other?

A. Yes.

Mr. Farwell: I ask to have the reports of survey marked for identification.

(They are marked respectively as Eastern Glade Exhibits 12 and 13 for identification.)

Q. You did not attend on either of those surveys on El Isleo?

A. I did not see El Isleo in her damaged condition.

Q. Now, Mr. Stewart, based upon the damage to the Eastern Glade that you saw, and assuming that the sur- [fol. 250] veys on El Isleo, Eastern Glade Exhibits 12 and 13 for identification, correctly set forth the damage that was sustained by El Isleo, are you able to express an opinion as to the speed of the Eastern Glade at the time of the collision?

A. Yes.

Q. In your opinion, what speed did the Eastern Glade have at the time of contact?

Mr. Clark: Objected to, first, that it appears from the witness's own testimony that he never saw El Isleo in her damaged condition; second, that from an inspection of the Eastern Glade after the collision, and examination of some documents which the witness has had placed before him here, it is obviously impossible to arrive at any conclusion as to the speed of the Eastern Glade. I object further on the ground that it is incompetent, irrelevant and immaterial, and on the further ground that the Eastern Glade's speed is a matter for the Court to decide from the testimony of the witnesses who were present at the time of the collision.

A. I should say none ahead.

Q. On what do you base that opinion?

Mr. Clark: It is understood, Mr. Farwell, that the witness's answer, and also any further questions to the witness on this point, are subject to my objection?

Mr. Farwell: Yes.

A. The Eastern Glade, at her then draft, displaced from 3500 to 4000 tons.

[fol. 251] Q. You refer to her draft?

A. Yes.

Q. What draft did you take?

A. That furnished by the officers of the vessel and the logbook, which showed 7 feet forward and 11 feet 3 inches aft. That weight, if any motion, on coming into contact with another vessel, especially at the amidship position, on that vessel, would have caused serious damage to the other vessel; and the Eastern Glade's steam and bow plating must of necessity have been forced back.

Q. Based solely on your examination of the Eastern Glade, was there evidence that she had headway, or was there evidence that she had no headway at the time of the collision?

A. The evidence was definite that there could not have been headway.

Q. And that is based solely upon the examination of the Eastern Glade?

A. Yes.

Q. What was the evidence?

A. The damage to the bow of the Eastern Glade is better described as that of a smearing action of the vessel, lying in at least a still position and not moving forward against the body, whatever it was, that caused that smearing action to port.

Q. Was there anything in the nature of the damage to the frames near the bow of the Eastern Glade that gave any evidence as to the movement of that vessel?

A. I take it you are now referring to the frames which we have called No. 1 and No. 2 next to the stem?

Q. I am.

A. No, there was no evidence at the stem, in fact, I would like to say at this point that from any profile the stem of the vessel was still in its normal condition, it was only [fol. 252] with relation to the center line of the ship that the stem was out of position.

Q. How was the stem out of position?

A. It was pushed off the center line of the vessel to the port side and not set back.

Q. If there had been an ahead movement—forward movement—on the part of the Eastern Glade, how would that be indicated by the damage to the stem?

A. The stem would then have been set back solidly and not just bent to port.

Q. You mentioned that No. 1 frame on the starboard side was distorted or moved to starboard, am I correct in that?

A. There was a part of the stem a movement to starboard, but the frame generally followed the movement of the starboard bow plating.

Q. Did that indicate to you whether there was any movement ahead on the part of the Eastern Glade?

A. Had there been any movement ahead of the Eastern Glade at the moment of contact, the starboard bow plating would have been crushed and not stretched to port.

Q. Did you see any paint marks along the starboard side of the Eastern Glade?

A. On the starboard bow for about 90 feet from the stem, and at and above the points marked "A" and "B" on Eastern Glade Exhibit 11, there were definite intermittent scrapes of black paint and above that, on the "J" and "K" strakes, particularly near the stem, there were white paint scrapes as though a lighter structure had scraped along the starboard bow plating of the Eastern Glade.

Q. You stated that there were black paint scrapes and [fol. 253] white paint scrapes—were those paint scrapes part of the paint of the Eastern Glade?

A. No, sir.

Q. They came from some other source?

A. Some other source.

Q. Was there any indication of the movement of this other source—let's call it El Isleo—any movement of El Isleo—from the appearance of the paint scrapes?

A. Yes. The paint was scraped toward the forward end of each of those intermittent marks.

Q. And what would that indicate?

A. That the body leaving the paint behind had dragged the paint of the Eastern Glade forward.

Q. Assuming that those paint marks came from El Isleo, the appearance of the scraping of the paint indicated a movement of El Isleo in which direction?

A. From aft to forward on the Eastern Glade.

Q. Was there any other evidence of such movement shown by the damage to the Eastern Glade?

A. Yes.

Q. What was that?

A. The projection on the side of El Isleo was moving from aft to forward on the Eastern Glade, because the

indents were heavy at the after side of each of the frames or ribs over which that projection traveled.

Q. The indents that you speak of are the ones that are indicated on Eastern Glade Exhibit 11 with the letters "A" and "B"?

A. Yes.

Q. From your examination of the Eastern Glade, what caused the indentations at the points "A" and "B"?

A. I have seen El Isleo for some years at her piers, and [fol. 254] I have seen her since the accident. I know that she has cargo port doors with external hinges protruding from the side of the vessel, and these indents had all the appearance of having been caused by these projecting hinges.

Q. What was there about the indents that causes you to say that El Isleo was moving forward with reference to the Eastern Glade?

A. Because, as I say, these marks traveled in the direction of the bow of the Eastern Glade, and the plate was pressed in at the indents hard against the after side of the frame. These projections would spring the frame in and then cause the indent to deepen until it arrived at the next frame, when the frame would be jumped, and the same thing would happen in the next frame space.

Q. I don't recall, Mr. Stewart, whether you fully covered the point respecting the displacement or the weight of the Eastern Glade as having a bearing on the question of her speed at the moment of collision. If the Eastern Glade had had headway at the time of the collision, what in your opinion would have been the result, so far as El Isleo is concerned?

Mr. Clark: It is understood, Mr. Farwell, that all this is subject to the same objection?

Mr. Farwell: Yes.

A. The calculated weight of the Eastern Glade at her then draft was around 3500 to 4000 tons. The momentum of a vessel of that weight striking at El Isleo amidships—had there been any headway on the Eastern Glade—would [fol. 255] have caused considerably more damage to El Isleo than is shown by the surveyor's report, and also the fact that only minor repairs were necessary to allow the vessel to proceed on her voyage——

Mr. Clark: I think Mr. Farwell is going far afield. Of course, all this testimony of the witness is subject to my objection, but I think there should be a stop somewhere.

A. (Continuing.) Confirms that there could have been very little contact between the two vessels at a vulnerable spot.

Cross-examination.

By Mr. Clark:

Q. It is true, isn't it, Mr. Stewart, that the bow of the Eastern Glade was damaged by a collision—that is true, isn't it?

A. To the best of my belief, yes.

Q. And in your testimony you have not mentioned any angle.

A. To what angle do you refer?

Q. Of collision?

A. No, sir.

Q. That isn't material to your testimony?

A. No.

Q. The result would be the same whatever the angle?

A. Well, not quite. So far as I could see, the contact was that of a smear rather than, as we understand it, a broadside collision.

Q. Am I correct in taking it from your testimony that the angle of collision is immaterial?

A. No, not immaterial, because had the Eastern Glade been—shall we say—at right angles to the center line of El Isleo, then this scraping on the starboard bow plating would not have been possible.

[fol. 256] Q. Then, it was at less than right angles?

A. It must have been less than right angles.

Q. And how much you don't attempt to say?

A. No, sir.

Q. But it doesn't make any difference how much more or less than right angles—your testimony remains the same?

A. No, I don't think you are quite right there. They must have been heading somewhat in the same direction.

Q. But is your testimony the same provided that it is always assumed that the angle of collision is less than right angles between the starboard side of the Eastern Glade and the port side of El Isleo?

A. Yes.

Q. And do I understand from your testimony (it is understood, of course, Mr. Farwell, that my cross examination is subject to the objection made on direct examination without prejudice)—do I understand from your testimony that if the Eastern Glade had had any headway on, her stem necessarily would have been set back solidly and not bent to port?

A. I would like to correct that and say——

Q. Isn't that what you said, though?

A. No.

Q. I took this down as you testified, and, of course, I cannot be sure that I have it right, it is in longhand, but I put down that you said, in answer to Mr. Farwell's question, "Stem would have been set back solidly and not bent to port." Didn't you say that?

A. I don't think I conveyed my opinion if that is what I said.

Q. You don't remember you said that?

A. Not in detail, but the idea I wished to convey was that the stem would have been set back solidly and probably to port. That was the idea I wished to convey, because [fol. 257] it must have gone back solidly, and the movement of El Isleo forward would have carried the stem to port as well.

Q. Well, isn't it true—haven't you found it true in your experience—that a collision between two vessels, the mere fact of speed on the part of one, where the damage is at her stem, does not necessarily result in the stem being set back solidly?

A. In a case of this nature, where the stem of one vessel strikes the amidships of the other vessel, what might be called the follow-through on the part of the Eastern Glade would have crushed her own bow back, and the stem had not lost any of its—shall I say—vertical position in profile.

Q. Do you remember the stem of the Florida after the collision with the Republic about 1908?

A. I was not in on it.

Q. You didn't see her stem?

A. No.

Q. The reason I asked you about that particular case was that there the stem was pushed right back solidly, and by solidly I understand you to mean that it is just pushed back like an accordion with no bend either to port or to starboard, is that what you mean?

A. Not necessarily so. The stem is pushed back from its normal position—and when I say, "back" I mean aft of its normal position. It may have gone to starboard or to port, depending on the circumstances of the case, but the bow plating will be crushed back with the stem, and the whole of the bow in profile will have lost its shape.

Q. Isn't it true that the angle of collision has a great deal to do with that?

A. The extent of the crush-back and the extent of the dis- [fol. 258] placement to port or to starboard of the center line, yes.

Q. Angle has a great deal to do with it?

A. Yes.

Q. The wider the angle the more the pushback?

A. Shall we go back to a right angle?

Q. Yes, perhaps "wider" isn't a good word, but I mean that at right angles the solid pushback is much more than it is at an angle less than a right angle, continuing on down until you get almost parallel—that is so, isn't it?

A. Yes, and, of course, the damage to the other vessel is affected the same way.

Q. Perhaps this is already covered in the answers you have given me, but I want to be sure: You said—and I copied this down at the time you gave the answer—"Any movement ahead, the starboard bow plating would have to be crushed."

A. Necessarily, because——

Q. Any movement ahead, is that right?

A. Yes, because of the weight of the Eastern Glade carrying her into an object, half of which has still to pass her.

Q. And that is without regard to the angle, is it?

A. Yes.

Q. And is that without regard to the helm of either vessel—by "helm" I mean which way the helm of either or both vessels is?

A. With the helm of El Isleo—we will take it a right rudder—if the Eastern Glade was still going ahead she would have dragged El Isleo's plating for a considerable distance from amidships aft.

Q. What if her helm were the other way?

A. A left rudder would hardly have left the marks of contact which we observed on the starboard bow of the Eastern Glade.

[fol. 259] Q. How about left rudder on the Eastern Glade?

A. Might I ask for the rudder on El Isleo?

Q. We will take either one, take left rudder on the Eastern Glade and left rudder on El Isleo.

A. The bow plating of the Eastern Glade would have been damaged far more than it was, and it would not have been possible, in my opinion, to have made the contact which we found at 63 and 86 feet from the stem.

Q. With a left rudder on each vessel, what would be their movements, that is, they would be turned how with reference to each other, if they both were under left rudder at the time of the collision?

A. The Eastern Glade would be turning away from El Isleo, and the stern of El Isleo would be turning away from the Eastern Glade, and it would be impossible to make a contact on the starboard bow plating of the Eastern Glade.

Q. How about left rudder on the Eastern Glade and right rudder on El Isleo?

A. The result would depend very much on the rate of swing of the two vessels. If El Isleo's stern was swinging heavily towards the Eastern Glade, and the stern of the Eastern Glade swinging slowly towards El Isleo, we might possibly get the result that is shown from the damage on the Eastern Glade.

Q. That is, right rudder on El Isleo and left rudder on the Eastern Glade?

A. Yes. We have to keep in mind that it is the stern of the vessel that swings and not the bow.

Q. Well, would you care to go further and take some other rudders? Could you tell us about what would happen—how [fol. 260] about right rudder on the Eastern Glade and left rudder on El Isleo?

Mr. Farwell: I note an objection to this line of cross-examination on the ground that the testimony in the case is uncontradicted that at the time of the collision the rudder of El Isleo was hard right, and as I recall the evidence from the Eastern Glade it is that although her rudder was left, she had been backing her engines, and she had overcome her swing to port and was, if anything, swinging to her starboard.

A. Left rudder on El Isleo would have drawn El Isleo's stern away from the Eastern Glade, and it is problematic

how much movement there would have been at the forward end of the Eastern Glade, due to her left rudder.

Q. Mr. Stewart, have you a license as a navigator?

A. No, sir.

Q. No pilot's license?

A. No.

Q. Did you ever navigate a ship at all?

A. No, sir.

Q. Never been on the bridge in charge?

A. No, sir.

Q. All your experience has been in the engineroom and surveying?

A. And from the results of collisions.

Mr. Farwell: I offer Eastern Glade Exhibits 12 and 13 for identification in evidence, subject to verification by Mr. Clark.

(They are marked in evidence as Eastern Glade Exhibits 12 and 13.)

[fol. 261] IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

A-113-306

POSTAL STEAMSHIP CORPORATION, as Owner of Steamship "Eastern Glade," Libellant,

vs.

STEAMSHIP "EL [illegible]," Claimant,

and

A-114-162

SOUTHERN PACIFIC COMPANY, as Owner of Steamship "El Isleo," Libellant,

vs.

STEAMSHIP "EASTERN GLADE," POSTAL STEAMSHIP CORPORATION, Claimant

Baltimore, Maryland,
November 12, 1936.

Depositions of David S. McDonald and Harry G. Eberly, de bene esse, pursuant to Notice, taken before Theodore A.

Rettaliata, Notary Public, at Lord Baltimore Hotel, Room 609, Baltimore, Maryland, November 12, 1936, 9:15 A. M.

[fol. 262] Appearances:

Messrs. Burlingham, Veeder, Clark & Hupper (by Chauncey I. Clark, Esq., and Burton H. White, Esq.), Proctors for Steamship El Isleo.

Messrs. Barry, Wainwright, Thacher & Symmers (by Earle Farwell, Esq.), Proctors for Steamship Eastern Glade.

Stipulation

(Usual stipulation.)

Thereupon DAVID S. MCDONALD, a witness of lawful age, produced on behalf of the steamship El Isleo, libellant, having been duly sworn by the notary, testified as follows:

Direct examination.

By Mr. Clark:

Q. What license do you hold, Mr. McDonald?

—. Master, all oceans.

Q. How long have you held it?

A. It is now on its third issue, three years and a half. In other words—this may not be the Gospel truth, but roughly—I should say 12 or 13 years.

Q. How long have you been going to sea?

A. Since 1910.

Q. What ships have you been engaged in—about how many?

A. In number?

Q. Yes, about how many?

A. Why, I should say 75—50 to 75.

Q. How long have you been with the Southern Pacific [fol. 263] Company?

A. Since August, two years ago.

Q. And you were second officer on El Isleo?

A. At the time of the accident, yes.

Q. What was the date of that accident, December 19, 1935?

A. Yes, sir.

Q. What other work have you been engaged in other than officer on steamships?

A. None other than the service.

Q. Have you ever done any piloting?

A. Yes.

Q. What piloting have you done?

A. I have done pilotage on practically all waters of the Atlantic Coast.

Q. What pilot licenses do you hold?

A. Portland, Maine, Boston and its approaches, New York, Philadelphia, Baltimore, Norfolk, Newport News, Savannah, Jacksonville, New Orleans, Houston, Galveston, and Los Angeles.

Q. Your license covers the waters where this collision occurred with the Eastern Glade in December 19, 1935?

A. It does.

Q. You were on watch, were you?

A. I was on the bridge at the time of the accident.

Q. What sort of a ship is El Isleo?

A. A freight ship.

Q. Of about what size?

A. The tonnage, I could not give you offhand, I imagine in the neighborhood of about 4,000 gross.

Mr. Clark: Is it agreed, Mr. Farwell, that we can take her dimensions and tonnage from Lloyds?

Mr. Farwell: Yes, but I would like to have the witness state the approximate length.

[fol. 264] Mr. Clark: What is her approximate length?

A. I should say 350 feet, 370 feet.

By Mr. Farwell:

Q. Her beam?

A. Beam, 49, I think. These statements, I mean, are merely approximations.

By Mr. Clark:

Q. What voyage was El Isleo on at the time of the collision, from where to where?

A. Well, she was on her voyage from Baltimore to Houston and Galveston by way of Norfolk, but at the particular time of the collision she was coming from Sparrows Point to Baltimore.

Q. What time did she leave Sparrows Point?

A. 5:30 in the afternoon, roughly, I should say.

Q. What were the weather conditions?

A. Very good, fine, clear evening.

Q. When did you go on the bridge?

A. I went on the bridge at 5:30 exactly—pardon me this interruption because we must have left prior to 5:30 from Sparrows Point because I went on the bridge at that time and we had been away from there then some few minutes.

Q. You were somewhere in the Channel when you went on the bridge, is that it?

A. Yes.

Q. Who else was on the bridge?

A. The Captain was on the bridge.

Q. What is his name?

A. Louis Korn.

Q. Who else?

A. The helmsman.

Q. What name?

A. By the name of Jensen, but whose initials I do not know.

[fol. 265] Q. How long had he been on the ship, do you remember?

A. I have not any idea. He was on the ship when I joined it.

Q. And you had been on her how long at that time?

A. I should say, roughly, three months, that particular ship, at that time.

Q. Was any one forward on lookout?

A. Yes, there was.

Q. What was his name?

A. His name was Jablonski.

Q. Let us get down to the time just before this collision occurred. What was it, dark or light, at the time you first observed the Eastern Glade?

A. It was getting dark sir.

Q. Were your lights on?

A. Our lights were on.

Q. What lights were you showing?

A. Regulation running lights, sir.

Q. Red and green?

A. Yes, regulation masthead, range lights and side lights, red and green, and stern light as well.

Q. Were they in good order?

A. They were.

Q. Showing brightly?

A. Yes, sir.

Q. What lights did you first see of the Eastern Glade?

A. The first lights I observed were her starboard, green light, and her range lights standing wide open.

Q. Where was El Isleo at that time? By that I mean where was she, in what channel was she and about where with reference to land marks?

A. In the Fort McHenry Channel somewhere roughly abeam of Fort Carroll.

Q. And on what course, if you know?

A. I don't know. We were on the ranges, the Fort McHenry ranges.

[fol. 266] Q. And what does that mean?

A. That means she was steering northwest by north, one-quarter north, magnetic. What our compass read I could not say.

Q. What are the ranges for?

A. To steer by.

Q. Will you explain that a little more, because when we get before the Court, Mr. McDonald, why, perhaps, if the judge were here he might ask just what the ranges are.

A. They are two lights set one in front of the other and some distance apart, the rear light higher than the front, and they are to be used to steer by when they are in line with each other, and when they are in line they designate you are in the center of the channel.

Q. Where was El Isleo with reference to the center of the channel as she proceeded at the time you first observed the lights of the Eastern Glade?

A. Our range lights were closed. In other words, we were in the center of the channel.

Q. On the ranges?

A. On the ranges, yes.

Q. Where was the Eastern Glade, that is, what channel was she in? Was she in the Fort McHenry Channel?

A. No, sir, she was coming out of the Curtis Bay Channel.

Q. And the Curtis Bay Channel is where with reference to the Fort McHenry Channel?

A. The Curtis Bay Channel makes off of the Fort McHenry Channel in an east and west direction at Buoy 8—Buoy 9, I should say, which is exactly across the channel from Buoy 8.

Q. You said that the range lights were wide open, the Eastern Glade's range lights were wide open?

A. That is correct.

[fol. 267] Q. Just what does that mean?

A. That means she is not head on to you.

Q. The wider open the lights are the more difference there is between the courses of the two vessels?

A. That is correct, sir.

Q. What was her bearing from you, about?

A. Well, she bore, roughly, I should say, between five and six points on our port bow.

Q. You were showing her which light of your sidelights?

A. Red light.

Q. Your red light only?

A. Red light only outside of our range lights which were wide open to her.

Q. You were showing your red light only?

A. Yes.

Q. And she was showing you which light of her sidelights?

A. Green only.

Q. What was the situation the vessels were in—by that I mean the navigation situation——

Mr. Farwell: Objected to.

A. I do not just get the drift of the question.

By Mr. Clark:

Q. Was it an overtaking situation, a meeting situation, or a crossing situation?

A. No, sir, I should say it was a crossing situation, purely and simply.

Q. What were the first signals blown by either vessel?

A. Two blasts blown by the Eastern Glade.

Q. When she blew the two blasts, about what were the bearings?

A. I should say, roughly, she bore four or five points on our port bow.

[fol. 268] Q. And she was showing you what light?

A. Green, and wide open range lights.

Q. Did she show the red at that time?

A. No, sir, at no time did she show the red.

Q. You were showing her what?

A. Red light and wide open range lights.

Q. And when she blew you the two-blast signal, about how far away was she?

A. Between one-half and three-quarters of a mile.

Q. What signal, or signals, were sounded by El Isleo?

A. Her request for two-whistle passage was denied by——

Mr. Farwell: Just a minute. I move to strike out the answer as not responsive.

Mr. Clark: He is right, Captain. I will now explain to you a little legal phraseology. I asked you——

A. He blew two-whistle signals.

Q. And what did you blow?

A. We blew the danger signal.

Q. Anything else?

A. Followed by one blast of the whistle.

Q. How long was it between the two from Eastern Glade and your danger, followed by one blast?

A. I should not say it was over ten or fifteen seconds at the longest.

Q. How do you estimate that time?

A. By the mere fact that I was within five or six feet of the whistle and Captain Korn said, "Refuse him permission," and I blew him the danger signal and one. That is all that transpired between the one and the other.

Q. So the time that transpired was the time it took for the Captain to tell you to refuse permission, to blow the danger; [fol. 269] and your walking over to the cord and blowing it?

A. Yes, sir.

Q. That only took a few seconds?

A. I should not say over ten.

Q. What speed was El Isleo making?

A. I should say, as I estimated once before, about six miles per hour.

Q. What is her usual full speed?

A. Twelve.

Q. And was she under telegraph full speed at the time?

A. She was under telegraph full speed.

Q. How do you account for the six as against twelve under those circumstances?

A. The lack of one boiler.

Q. How many boilers has she?

A. Two.

Q. She was on one?

A. She was on one.

Q. After El Isleo blew the four blasts, followed by one, what signal or signals, if any, were sounded by the Eastern Glade?

A. An immediate answer of our danger signal and one by her danger signal and one.

Q. Now, in order that the record will be clear, Mr. McDonald, will you state the signals blown and in the order in which they were blown and by which vessel they were blown?

A. Eastern Glade blew two whistles; El Isleo blew four whistles and one whistle, answered by the Eastern Glade's four whistles and one whistle.

Q. You have given us an estimate of the time between the Eastern Glade's two blasts and El Isleo's four blasts followed by one. Now, will you give us an estimate of the elapsed time between El Isleo's four blasts, followed by one, and Eastern Glade's answering four blasts followed by one?

A. Very little difference in time elapsed.

[fol. 270] Q. Was it just a matter of seconds?

A. Just a matter of seconds, fraction of a minute. Of course, one must always understand that a little time will elapse for the sound to carry from one vessel to the other.

Q. Yes, that is true.

A. But that is negligible.

Q. You mean by that that when Eastern Glade blows a signal it is not heard on your vessel immediately it is sounded on Eastern Glade, and vice versa?

A. And we would not hear her answer to our signal for twice as long for the simple reason that she must wait for the sound to come from us to her and for her sound to come back to us. But it all was very much less than a minute.

Q. Did you know where the Eastern Glade was bound?

A. I did not know. I had no idea where she was bound.

Q. What did you take her two-blast signal to mean?

A. That she was crossing our bow from port to starboard.

Q. Did you know what her speed was?

A. No, I did not, but I should estimate, probably, about eight knots.

Q. About where was the El Isleo at the time she blew her danger signal?

A. Well, I should say that the El Isleo at the time was closer to Buoy 8 than to Fort Carroll. She was some place between Fort Carroll and Buoy 8, probably closer to Buoy 8 than Fort Carroll.

By Mr. Farwell:

Q. Was that when she blew her danger signal?

A. When we blew the danger signal, yes, I should say she [fol. 271] was right about there (indicating) at the time.

By Mr. Clark:

Q. Now, will you put that down there again where you say she was at the time you blew the danger signal?

(Witness marks on chart 545 approximate position of El Isleo at the time she blew danger signals and one.)

A. That is correct, somewhere in that neighborhood. It might be exaggerated somewhat.

(Position marked on chart with letter "A.")

Mr. Clark: I now offer this chart in evidence to be marked "McDonald El Isleo Exhibit A."

Q. Now, will you please indicate on the chart the approximate position—I realize you cannot do it accurately, Captain—the approximate position of the Eastern Glade at the time she blew her two-blast signal and you gave the answer.

(Witness does as requested.)

(Witness indicates on chart approximate position of Eastern Glade when she blew two and was answered by El Isleo with the longs and one by leader line to letter B.)

Q. What was done with the engines on El Isleo, if anything?

A. There was nothing done with the engines on El Isleo, [fol. 272] except she was kept going full speed in an endeavor to get out of the channel and away from her.

Q. As the vessels came on, did you at any time think there was danger of collision?

A. I thought so all the time after the danger signals were exchanged.

Q. That is, after each vessel blew danger signals?

A. Yes.

Q. What was done with the rudder of the El Isleo?

A. Put hard right as soon as we passed Buoy 8.

Q. How did you pass Buoy 8?

A. Very close aboard on our starboard hand.

Q. What did the Eastern Glade do, how did she proceed?

A. Well, she proceeded out the Curtis Bay Channel and swung left.

Q. Will you please take your pencil and draw a line from the position of El Isleo as you have marked her with the leader "A" today and draw a line of the course of El Isleo from the time she was in position "A" until the collision.

(Witness does as requested.)

Q. You have drawn some dotted lines which go up the channel and then around buoy 8, leaving buoy 8 on your starboard side.

A. That is right, sir.

Q. And then your last line is just past the depth mark 23. Now, in the meantime, what was Eastern Glade doing? Will you please mark on the chart what she did.

(Witness does as requested.)

Q. Now, the way you have marked this on the chart, your [fol. 273] last dotted line for the Eastern Glade comes against the dotted line for El Isleo at a point just above depth mark 20. Does that indicate where the collision occurred?

A. That is supposed to indicate the point of collision, yes, sir.

Q. How did the vessels come together, I mean by that, what part of the Eastern Glade struck what part of the El Isleo?

A. The Eastern Glade struck our port side very nearly at the Plimsoll mark at an angle of, I should say, forty-five degrees between sterns.

Q. And what part of her struck, was it her stem that struck you?

A. Her stem struck our mid-section.

Q. Would you mind taking your pencil and drawing the two ships in there together about the way they came together. You have the collision right there (indicating).

A. That is very close to the point.

Q. But instead of having two marks, I want two ships.

Mr. Farwell: Before the witness marks that, he had indicated the course of the El Isleo as extending beyond the depth mark 23.

Mr. Clark: That is right, and she did go there, too.

The Witness: She is bound to have gone further after the collision.

Q. Was she going full speed at the time of the collision?

A. No, sir, we stopped immediately prior to the collision.

Q. About the same time?

A. Yes.

Q. But after the collision you did go further?

[fol. 274] A. We must have. The impact would have sent us further itself had we no headway.

Q. And you did not stop until about the time of the collision?

A. That is correct, sir.

Q. I am asking you now to make two boats instead of having two marks there.

A. We will call this (indicating) the El Isleo and that (indicating) the Eastern Glade.

(Witness marks the vessels together as they were at the time of collision, indicated by leader "C.")

Q. Mr. McDonald, you have not attempted to draw this to scale?

A. No attempt has been made to draw it to scale, no, sir.

Q. These are the approximate positions?

A. Approximations. Everything is approximation, as far as that diagram is concerned.

Q. I notice from the way you set this out on the chart, Mr. McDonald, that at the time of the collision El Isleo was out of the channel?

A. That is correct.

Q. Are you sure about that?

A. Positive.

Q. How sure are you of that?

A. I am just so certain that I would stake my life on it.

Q. Is there anything that impressed you at the time so that you can look back upon it which satisfies you the collision must have been outside of the Channel?

A. Yes, the blanking out of the Fort McHenry range lights.

Q. Please explain how that blanking out of the Fort McHenry range lights satisfies you that you were out of the channel and to eastward—that is right, isn't it?

A. Yes, sir.

[fol. 275] Q. Please explain on the record just how that satisfies you you were out of the channel.

A. The Fort McHenry channels do not show but a very short distance outside of the Fort McHenry—let me correct that, the Fort McHenry ranges do not show but a very short distance outside of the channel.

Q. But they do show some?

A. Slightly, yes.

Q. When did this blanking out of the ranges occur?

A. Just about the time of the collision.

Q. Did you at any time take bearings?

A. I did, sir.

Q. And what did those bearings show?

A. The bearings——

Q. When I say "show," I mean where did they show the vessel was when you took them with reference to the channel, how far out to the eastward?

A. I should say, roughly, 200 yards, a ship length and a half, or two ship lengths.

Q. And that is where you were stopped?

A. That is where we finally came to rest.

Q. 200 yards?

A. I should say so.

Q. Did you record those bearings anywhere?

A. I think I recorded them in testimony some place given prior to this.

Q. You mean by that you may have recorded them when you gave a statement in our office?

A. Yes.

Q. But you did not record them in your log?

A. Officially, no, but I have them very close in my head, though.

Q. When you say you have them close in your head, what does that mean?

A. That means I can give them within possibly a point.

[fol. 276] Q. Let me ask you this, what was the heading, if you know, of the El Isleo at the time of the collision?

A. The El Isleo was heading east northeast, roughly, of course, swinging, you know, all the time.

Q. How much of a change of course is that from the channel course?

A. Pardon my statement in my last answer of east northeast. I mean northeast by north. It was my error. I beg your pardon.

Q. How much of a change of heading is that from the channel course?

A. Six and a half or seven points.

Q. Are you sure that you were on the ranges at the time the signals were first exchanged?

A. Absolutely, sir.

Q. And are you sure that you were on the course you have just given at the time of the collision?

A. Well, very closely. I would not——

Q. How do you arrive at it, Captain?

A. Because immediately at the time of collision I spoke to the quartermaster and called his attention to Dundalk Air Beacon which, at that moment, was immediately ahead of us.

Q. Will you please mark that on the chart.

(Witness does as requested.)

Q. Is that it (indicating)?

A. That is correct, sir.

(Witness indicates Air Beacon and it is leader line marked "D.")

Q. And the way you have the El Isleo on here, it is headed approximately for that, is it not?

A. That is correct, sir.

[fol. 277] Q. You did not write up the log, did you?

A. I did not, sir.

Q. Who did?

A. J. G. Henske.

Q. Who is that?

A. Chief officer.

Q. I show you a chart No. 545 marked Eastern Glade Exhibit 9. I call your attention to this mark across there. Do you see where it is?

A. Yes.

Q. And the leader line to it, and it says "Place of collision."

A. Yes.

Q. That is the place of collision according to the testimony of the master of the Eastern Glade. Now, what do you say as to that?

A. I should say it is all wet, sir.

Q. You will observe from that mark that according to the Master of the Eastern Glade the collision occurred on your own lefthand side of the channel?

A. According to his statement there it appears so.

Q. Was El Isleo ever on her own lefthand side of Fort McHenry channel?

A. At no time from the time we came into the Fort McHenry channel until long after the collision occurred.

Q. You arrived in port when?

A. This trip, you mean?

Q. Yes.

A. Tuesday morning.

Q. And you sail when?

A. Supposedly tomorrow night.

Q. Do you ever keep a rough log?

A. We do not, no. We keep a slate log, you know, but as soon as the smooth log is written up the slate is erased.

Mr. Clark: Your witness.

[fol. 278] Cross-examination.

By Mr. Farwell:

Q. Mr. McDonald, you came on the bridge after El Isleo had left Sparrows Point?

A. That is correct, sir.

Q. Do you know where El Isleo was lying at Sparrows Point?

A. Yes, sir.

Q. Will you mark it on the chart, please, your Exhibit A?

A. Might I refresh myself from the log book for one second, sir?

Q. Certainly.

A. I would not say for certain whether she was at the ship yard pier or at the High Pier. That was what date?

Q. December 19th.

(Witness refers to log.)

A. Might I ask off the record if that is very vital, because I am not certain where she was lying.

Mr. Clark: Then just say so, if you are not sure. Just tell him what you know.

A. We were laying either at this berth here (indicating) —no, it was this one (indicating) here. I am certain now. I do not need to recall. On one side or the other of that pier (indicating), which side I do not know.

By Mr. Farwell:

Q. The pier that you indicate, I put a circle around.

A. That is correct, sir.

Q. With a leader and "Pier from which El Isleo left."

A. That is correct, sir.

[fol. 279] Q. You were not on deck when your ship left the pier?

A. I was not, sir. On deck?

Q. Yes.

A. Yes, sir, I was on deck. I let go the stern lines.

Q. Your ship proceeded out to the south'ard through the channel leading into the Brewerton Channel?

A. That is correct, sir.

Q. And where was El Isleo when you came on the bridge?

A. On the angle between the Fort McHenry and Brewerton Channels. We were just making this turn (indicating), when I came on the bridge.

Q. That is, you were turning from the Brewerton Channel into the Fort McHenry Channel?

A. That is correct, sir.

Q. What was the occasion for your going on the bridge?

A. The occasion for my going on the bridge was to relieve the man for supper that was already there.

Q. Whom did you relieve?

A. Mr. Ward, the third officer.

Q. Do you know whether he has a pilot's license?

A. I think he has. I know he has.

Q. Captain Korn had no pilot license, though?

A. He had no pilot license. That is correct.

Q. So that one or the other——

A. Mr. Ward or myself.

Q. —had to act as pilot?

A. Mr. Ward and myself had the licenses only.

Q. After you came on the bridge, who was in charge of El Isleo, you or the Captain?

A. Just exactly by that what is meant, sir? I was the pilot and the master was the master.

Q. Who was giving the orders?

A. The master.

[fol. 280] Q. Did you hear any orders given to the wheel, to the helmsman, by the master in order to make the turn from Brewerton Channel into Fort McHenry Channel?

A. Yes, sir.

Q. And the master gave those orders?
A. Yes, sir.
Q. You had nothing to do with that?
A. I had plenty to do, sir. I was there in an advisory capacity as pilot.
Q. Did you make any suggestions?
A. I concurred with his orders.
Q. Did you make any suggestions?
A. No, sir.
Q. Did you say anything to him?
A. Not at that time, no, sir.
Q. So that he gave the orders?
A. That is correct, sir.
Q. And you just stood by there?
A. By silence I concurred with his orders. I agreed with them.
Q. That is, you did not disagree with them?
A. That is correct, sir.
Q. And at the time you came on the bridge, do you know how the engine room telegraph was?
A. On full speed ahead, sir.
Q. How do you know that?
A. Because I was attending to the telegraph. When I relieved Mr. Ward the ship was turned over to me that way.
Q. And did you verify that by looking at the telegraph?
A. I did, sir.
Q. Where is the telegraph, I mean, inside of the wheelhouse?
A. No, sir, it is out on the bridge.
Q. Do you have an open bridge?
A. We have an open and closed bridge, both. We were using the open bridge.
[fol. 281] Q. Where was the helmsman standing?
A. In the wheelhouse, immediately behind me.
Q. Well, the wheelhouse is enclosed?
A. That is correct, sir.
Q. And you were standing outside of the wheel house?
A. That is correct, sir.
Q. On the bridge?
A. Yes, sir.
Q. And the bridge runs across the ship?
A. Athwartships.
Q. From one side to the other, forward of the wheel house?

A. That is right, sir.

Q. Is there a telegraph in the wheel house?

A. There is, sir.

Q. And is there a telegraph out on the bridge?

A. There is, sir.

Q. Do those two telegraphs work simultaneously?

A. Yes.

Q. Whereabouts on the outer bridge outside is the telegraph?

A. Immediately forward of the wheel house on the starboard hand side.

Q. How far from the amidship line of the vessel?

A. Twenty-five—no, not that—twenty feet, roughly estimated.

Q. Well, what is the length of the bridge?

A. Forty-nine feet, I should say, roughly, her entire beam.

Q. So that if the telegraph is twenty feet from the amidship line it is pretty well over?

A. Did I say twenty feet from the amidship line? I intended that to be from the starboard hand end of the bridge.

Q. Then we will go back to the first question, How far from the center line of the ship is the engine room telegraph?

A. Roughly, I should say between four and five feet.

[fol. 282] Q. To the starboard of the center line?

A. That is right, sir.

Q. That is where you were standing?

A. That is right, sir.

Q. Where was the Captain standing?

A. On the port wing of the bridge, just off of the center line. He and I were within six or eight feet of each other.

Q. Now, will you mark on the chart the position of El Isleo when you first saw the Eastern Glade?

A. Somewhere right in here (indicating). That is merely rough.

Q. The position that you indicate is over the cabled area in the westward of Fort Carroll?

A. I wouldn't be sure of that, because there were no bearings there, but, roughly, I should say, yes, sir.

Q. That is the position you marked?

A. Yes, that is correct.

Q. I am marking that "E." Whereabouts in the Curtis Bay Channel was the Eastern Glade at that time?

A. Just leaving the Creek.

Q. Will you indicate it, please, on the chart?

(Witness does as requested.)

Q. That is marked "F." Then your ship continued on at whatever speed she was making without any change in speed?

A. That is right, sir.

Q. And the next thing that happened was you heard a two-whistle signal from the Eastern Glade?

A. That is right, sir.

Q. Now, where was El Isleo when you heard that two-whistle signal?

A. I should say at the position marked "A."

[fol. 283] Q. That can not be correct, because the position marked "A" was the position of your ship at the time you blew the danger signal.

A. Well, we blew the danger signal immediately we heard the two-whistle signal.

Q. And there was no perceptible interval?

A. Only, possibly, seconds.

Q. Who blew the danger signal?

A. I actually blew it.

Q. On your own initiative?

A. No, sir.

Q. Well, what caused you to blow it?

A. Master's orders, sir, which were correct, in my estimation.

Mr. Farwell: I move to strike out the latter part of the answer as not responsive.

The Witness: Pardon me.

Q. Before the Eastern Glade blew whistle signals, and after you had seen her, you and the captain talked about this vessel coming out of Curtis Bay; isn't that correct?

A. Before she blew any signals at all?

Q. Yes.

A. Yes, sir, we had spoken that there was a vessel coming out of there. That is correct.

Q. Of course, that vessel coming out of Curtis Bay Channel either had to head down the Fort McHenry Channel or go up Fort McHenry Channel?

A. Not necessarily, sir.

Q. Where would she go?

A. She could have gone out on the Flats and anchored, which is frequently done. In fact, there are nine or ten lying there now.

[fol. 284] By Mr. Clark:

Q. You mean today?

A. When we came in. I do not know about today, of course.

By Mr. Farwell:

Q. You know there is a regular designated anchorage——

A. That is correct, sir.

Q. —just below the intersection of the Curtis Bay and the Fort McHenry Channels.

A. That is right, sir.

Q. You know that there is an anchorage on the Eastern side of the Fort McHenry Channel further up toward Baltimore?

A. That is right, sir.

Q. And those are the regulation anchorages, aren't they?

A. One is. The other, I should not say so.

Q. Well, do you say that the chart is wrong in indicating those as anchorages?

A. No, sir, but this is a quarantine anchorage.

Q. But it is an anchorage?

A. Yes, but she was not under Quarantine regulations, being a coastwise ship.

Q. How do you know that?

A. Well, we know the ship, sir. We know these ships as they come and go, you know, sir.

Q. You recognized the Eastern Glade then?

A. Well, we recognized the ship as a coastwise ship, yes, by her stack marks. We did not recognize her as the Eastern Glade.

Q. When did you see her stack mark?

A. When she started out, before it got too dark. It was just at the turn of day and dark.

[fol. 285] Q. When she started out from where?

A. When we first sighted her, I am speaking about. You see, in here (indicating), we recognized she was coming out of the channel and she was one of the coastwise colliers,

or ore carriers, or whatever you call them, a bulk cargo carrier.

Q. When the Eastern Glade was at the position marked "F", that was the first time you saw her?

A. That is correct.

Q. You had not seen her before?

A. No, sir.

Q. When the Eastern Glade was at the position marked "F," that was the first time you saw her?

A. That is correct.

Q. You had not seen her before?

A. No, sir.

Q. You did not know where she came from, except she was merely in that channel?

A. We knew she came out of Curtis Bay. That was the only place in there for her to come from.

Q. Curtis Bay, that is a pretty large place there?

A. Yes, of course.

Q. You do not know what pier she came from?

A. Oh, heavens, no. I would not attempt to say that.

Q. At the time you first saw the Eastern Glade when you were at the position marked "E" and she was at the position marked "F," you recognized her by her stack marks?

A. I wouldn't say we recognized her, because we could not recognize any ship, unless we were pretty familiar with her, but we recognized she was one of the coastwise ships. That is what I am driving at.

Q. But you said something about her stack marks. What stack marks did she have?

[fol. 286] A. I will tell you, offhandedly I do not know. I couldn't tell you what our stack mark is on record, and I have been shipmates with her for three years.

Q. You said the Eastern Glade was a bulk collier, or something?

A. Bulk cargo carrier. At that time, that it what we took her to be. Yes, sir, that is correct.

Q. How could you tell that?

A. Well, it is pretty hard to say how any one would tell anything. I am very poor at descriptive work.

Q. Do you mean her smokestack was aft?

A. No, no, I do not. You mean by her construction?

Q. Yes.

A. No, she is not constructed that way. Her smoke stack is not aft.

Q. But, anyway, when you first saw her you recognized her?

A. As a coastwise ship.

Q. By some method you are not able to explain at this time?

A. That she was a coastwise ship, that is right, sir, we recognized her as an American Coaster.

Q. Well, now, a vessel coming out of Curtis Bay channel ordinarily would turn either up or down the Fort McHenry Channel, wouldn't she?

Mr. Clark: I object to the question as improper. What a vessel ordinarily would do is not an issue in this case.

By Mr. Farwell:

Q. Go ahead and answer.

A. If not going to an anchor.

[fol. 287] Q. Well, now, when she blew two signals to you, you did not know what that meant?

A. Why, we presumed it meant crossing signal of course, sir.

Q. Well, on your direct examination you said you had no idea what it meant.

Mr. Clark: I do not think I agree with that.

Mr. Farwell: I have a note of it here.

Q. And then later on you took it to mean she was crossing your bow.

Mr. Clark: That is what he testified to.

Mr. Farwell: At first you said you had no idea what it meant.

Mr. Clark: Do you remember that? I do not. Did you say that?

A. If I did, I was certainly wrong.

Mr. Clark: I think you are mistaken, Mr. Farwell.

The Witness: Because two whistles always mean that.

By Mr. Farwell:

Q. Well, now, then, your testimony is that as soon as she blew the two whistles you knew that she was going to cross your bow?

A. We presumed her to be crossing our bow. That is right.

Q. And she was going to cross the Fort McHenry Channel [fol. 288] and go over on the Flats?

A. That wouldn't be necessary. If she crossed and fell in ahead of us it would be still the same thing. She was still crossing our bow.

Q. Suppose she turned close to buoy 7-M and went up on the port side of Fort McHenry channel, wouldn't that be consistent with a two-whistle signal?

A. But that wouldn't be consistent with the rules of the road.

Mr. Farwell: I move to strike out the answer as not responsive.

Q. My question is, wouldn't that be consistent with a two-whistle signal?

A. No, sir, she would not be crossing our bow then.

Q. Suppose you were coming out of the Curtis Bay Channel and you wanted to turn up the Fort McHenry Channel and there was a vessel somewhere down by Fort Carroll——

A. Just reversing the positions?

Q. No, I am putting you in their situation.

A. Just reversing the vessels?

Q. I am putting you in the position of the Eastern Glade?

A. Yes, that is what I say, you are just reversing the vessels.

Q. And your ship wanted to turn up the Fort McHenry channel?

A. All right, sir.

Q. Would you blow any whistle to indicate that?

A. I would blow him no whistles at all. I would stop my ship and let him proceed.

Mr. Farwell: I move to strike out the answer as not responsive.

Mr. Clark: I suggest it is responsive.

[fol. 289] By Mr. Farwell:

Q. Would you blow any whistle to indicate that?

A. Yes, I would give him one blast of the whistle, giving him the right of way, telling him I was going to stop and wait for him to go ahead.

Q. You mean that would indicate you were going to go under his stern?

A. That would indicate to him, sir, I was granting him permission to proceed on his way, irregardless of where I went.

Q. Suppose that the other ship in the Fort McHenry Channel was so far down that you could turn and come up ahead of him, would you blow any whistle at all?

A. If there was no danger of collision, and no call for it, as you say, it being so far away, I would not. There would be no call for it.

Q. Suppose you were not sure whether there was sufficient distance, would you blow any whistle?

A. I would blow the one whistle and stop my vessel and give him the right of way, which his red light calls for.

Q. So that when he blew two whistles to you, you say you knew then that he was going to cross the channel and go over on the Flats, that he did not intend to turn up the channel?

A. We did not know he did not intend to turn up the channel, but we did know he was blowing a crossing signal to us.

Q. And two whistles always mean a crossing signal to you?

A. I beg your pardon.

Q. Do two whistles always mean a crossing signal to you?

[fol. 290] A. No, not if I am overtaking a vessel, it does not.

Q. But up until the time that the Eastern Glade blew two whistles you did not know whether she was going up the Fort McHenry Channel or down the Fort McHenry Channel?

A. That is correct. We had no way of knowing.

Q. And did it never enter your mind when the Eastern Glade blew two whistles that she was going up the Fort McHenry Channel toward Baltimore?

A. Why, I had no reason to believe she would go either way. I left my mind completely open for her to signal to me.

Q. That is just the point I am getting at; when she blew the two whistles it never occurred to you that she was going to change her course to port and go up the Fort McHenry Channel?

A. Yes, surely.

Q. That did occur to you?

A. She has a right to go either way she wishes.

Q. Well, then, that two-whistle signal might have indicated, there was a possibility that it indicated she was going to turn to port and go up there?

A. She would still, I say, sir, be crossing our bow. She would be falling in ahead of us.

Q. That would only be so if she crossed over on your side of the channel, but if she remained on the port side of the channel she would not have crossed your bow, would she?

A. She would be violating the rules of the road if she did that.

Q. But that is a matter for the Court to decide?

A. Excuse me if I am stepping over my bounds here, but [fol. 291] what I am trying to say is that I am putting myself in the position of a man coming out of there. I would be governed by the rules of the road.

Q. I want to know what you thought and what this whistle signal conveyed to you when you heard it?

A. The possibility that she was crossing our bow—in fact, the fact that she was going to cross our bow.

Q. That whistle signal could also indicate that the Eastern Glade was turning to her port up the Fort McHenry Channel, isn't that so?

A. Wouldn't that throw her across our bow, sir?

Q. Isn't that so, it could have indicated that?

A. Yes, it could.

Q. If your ship had been, say, on the starboard side of the channel, your own starboard side, and if the Eastern Glade had turned very close to Buoy 7-M and had kept on the western side of the channel, the two vessels could have gone up parallel?

A. Arm in arm practically, if they liked, yes.

Q. And in that situation she would not have crossed your bow, would she?

A. No.

Q. And didn't it occur to you that is what she was doing?

A. No, sir. It did not, most emphatically. That was the last thing that would occur to any man, that she would confiscate the wrong side of the road, so to speak.

Q. You could come up the starboard side of the channel?

A. Yes.

Q. And she could be over on the port side?

A. Correct, sir.

Q. And it would not interfere with you at all so long as [fol. 292] each vessel stayed on its respective side of the channel? Isn't that so?

A. That is correct.

Q. She would not cross your course, in that case?

A. No, sir.

Q. And yet that situation never occurred to you when she blew the two whistles?

A. That situation was impossible to develop for the simple reason that there were vessels bound out.

Q. But did that situation occur to you when she blew two whistles?

A. No, of course not. There were vessels bound down the channel.

Q. So that at the time she blew two whistles you acted on the sole assumption that she was crossing Fort McHenry Channel and was going over to the Flats to anchor.

A. No, I did not. I acted on the sole assumption that she was blowing me a crossing signal, which would have given her the privilege to anchor over there or fall in ahead of us.

Q. If she continued on and you continued on, a collision was going to happen?

A. Exactly.

Q. You realized that as soon as she blew the two whistles?

A. Yes.

Q. And you blew the alarm whistle?

A. That is right, sir.

Q. Who gave the order to blow the alarm whistle?

A. Captain Korn.

Q. Did you call his attention to the two-whistle signal being blown?

A. Yes, very emphatically, his attention was called to it.

Q. What did he say?

A. I said, "He is blowing two whistles."

Q. Is that all?

A. That is all that was said.

[fol. 293] Q. Didn't you say, "My God, what is that ship trying to do."

A. No, indeed.

Q. The only thing you said——

A. I said, "There is a two-whistle signal, Captain."

Q. Did he say anything?

A. He said, "Answer it with the danger signal and one."

Q. How long after that did the collision take place?

A. Five minutes.

Q. And when you blew the alarm whistle, was any order given to the wheel?

A. At that immediate moment, no, sir.

Q. Why not?

A. We had a buoy to contend with on our starboard hand and also an 18-foot lump to contend with.

Q. Didn't you haul a little bit over to your starboard side?

A. I have so indicated by the position "A," that we are on the starboard side of the range lights. I have indicated by these two positions that we are easing over all the time as much as we could possibly get.

Q. When El Isleo was at "E," that is when you saw the Eastern Glade.

A. That is right, sir.

Q. Position "A" was when?

A. Signals were exchanged.

Q. When you blew your alarm whistle?

A. Roughly, yes, sir, that was the position.

Q. And between positions "E" and "A" you had altered your course to the starboard?

A. That is correct, sir.

Q. Why did you do that?

A. A courtesy move, to give him more room to swing as he came out of the channel, if he so desired.

Q. To swing either up or down the channel?

A. As he liked.

[fol. 294] Q. At position "A," how far over had you gotten beyond the thread of the channel?

A. We were just off the range line center on our own side.

Q. About in the middle of your starboard side?

A. About, roughly, I should say, in the middle of the starboard hand lane.

Q. Who gave the order to haul over a little bit to starboard between "E" and "A"?

A. Captain Korn.

Q. After you blew the alarm whistle, did you haul farther over to starboard so to pass Buoy 8 as close as possible?

A. We passed Buoy 8 as close as possible, yes, sir, as indicated by my marks there (indicating).

Q. The course that you have sketched here indicates a change to your starboard close to Buoy 8-M, that is?

A. That is correct.

Q. That was done pursuant to Captain Korn's order?

A. That was done by Captain Korn's orders, is right. He actually issued the orders.

Q. He gave a specific order to the helmsman?

A. Yes, to right his helm as soon as he possibly could.

Q. How soon after the alarm whistle was that given?

A. It was not a matter of more than a minute, or half a minute, just long enough to advance these couple hundred yards necessary to clear Buoy 8.

Q. And then was your helm put hard over?

A. Hard right.

Q. When you got up to Buoy 8?

A. Hard right, sir.

Q. Hard right?

A. Yes, sir.

[fol. 295] Q. And you continued to swing?

A. We did, sir.

Q. You were watching the Eastern Glade, of course?

A. Yes, very closely.

Q. You did not hear any backing signals from her?

A. Not until just immediately prior to the collision, just a matter of, I should say, roughly, a second.

Q. She appeared to continue on?

A. She appeared to continue on very nearly—she swung left very slightly and then seemed to swing right.

Q. That is what you have indicated here?

A. That is what I have tried to indicate, yes, sir.

Q. Will you mark, please, where the Eastern Glade was at the time your helm was put, or your rudder was put hard right—you were then abreast of Buoy 8, weren't you?

A. Yes, when the helm was jammed hard down we were abreast of Buoy 8.

Q. Where was the Eastern Glade at that time?

A. I should say, roughly, just leaving Curtis Bay Channel.

Q. Just mark it on her course there.

A. Roughly, here (indicating).

Q. The position of the Eastern Glade marked with the letter "G" indicates her position at the time El Isleo was abreast of Buoy 8-M?

A. Yes.

Q. That is correct, is it?

A. That is the correct position, as near as I can give it.

Q. Now, then, you continued on under a hard right rudder?

A. That is right, sir.

Q. With your engines going?

A. Full ahead.

Q. Full ahead?

A. That is right, sir.

[fol. 296] By Mr. Clark:

Q. Telegraph full ahead?

Mr. Farwell: With the telegraph full ahead but with no change in your engines' speed?

A. No, sir, no change in speed.

Q. You did not stop your engines until the collision happened, did you?

A. That is right, sir.

Q. Was the shock of the collision simultaneous with the stopping of the engines?

A. No, sir, it was immediately following the stopping of the engines.

Q. About a second?

A. A very short time. I couldn't say whether it was a second or two.

Q. Did you handle the telegraph?

A. I handled the telegraph to stop the ship, yes, sir.

Q. Of course, when you were at buoy, abreast of Buoy 8-M, you knew the collision was going to happen then, didn't you?

A. We knew there was very grave possibility of its happening, yes, sir.

Q. If you had reversed your engines at that time, would not the collision have been avoided?

A. No, sir, it would have made a head-on-collision more nearly.

Q. If you had reversed your engines before you got up to buoy 8-M, wouldn't that have avoided collision?

A. Yes, sir, it would.

Q. Did it ever occur to you to reverse the engines?

A. No, sir, for the simple reason that he had answered our one blast to go ahead, continue our course and speed.

[fol. 297] Q. But you did not continue your course and speed, did you?

A. When it became evident there was bound to be a collision we had to do something.

Q. And, of course, your change of course to starboard after you blew the alarm whistle was because of the danger of collision?

A. That is correct, sir.

Q. You were hauling farther away from him?

A. Trying to get away from him, that is right, sir. That was also the reason for not stopping the engines.

Q. You thought you could get ahead of him?

A. We were practically in that situation it was the only thing that we could do.

Q. You had nothing to do with the navigation of the ship?

A. I was on the bridge in an advisory capacity to the master.

Q. But you actually did nothing?

A. I did not actually issue any orders, no sir.

Q. You made no suggestions to the captain?

A. There were none required. He was acting correctly.

Q. Just answer the question. I move that the answer be stricken out. You made no suggestions to the captain as to what to do?

A. No, sir.

Q. He, alone, gave the orders?

A. That is correct, sir.

Q. He alone decided what was to be done and issued orders to have it done?

A. That is correct, sir.

Q. You testified before the Local Inspectors, didn't you?

A. Yes, sir.

Q. And do you remember making a diagram for them [fol. 298] and marking the position on the chart?

A. I do.

Q. I have here what was sent to me as a copy of the Local Inspectors' hearing. I show you here a diagram which at the bottom is signed "David S. McDonald, Exhibit No. 5." That is a correct copy of the diagram that you made before the Local Inspectors, isn't it?

A. It is, sir. As you can see, it looks very much like this (indicating chart).

Q. Well, it is not wrong, is it?

A. No, sir, as far as I can see it is not, no, sir.

Q. That shows the two vessels as they were substantially at the instant of collision?

A. Roughly, yes, sir.

Q. The reason I say "substantially" is because there is a slight space between the stem of the Eastern Glade and the port side of your ship.

A. That is not supposed to be there.

Q. The vessels are supposed to be——

A. They are supposed to be in contact.

Q. But, except for that, the diagram is correct?

A. Well, of course, it is a sketch, you know. None of it is to scale.

Q. You had a chart there, didn't you?

A. The same as I have before me now, yes, sir. No, by golly, we did not, at the Inspectors. No, sir, we did not at the Inspectors. This (indicating diagram) was the only thing we had before the Inspectors.

Q. Well, what the Inspectors did then was to make a sketch showing the channel drawn from the chart?

A. That is right, sir.

Q. And then you indicated on that sketch——

A. That is right, sir.

[fol. 299] Q. —the position of the vessels?

A. That is correct, sir.

Q. In collision?

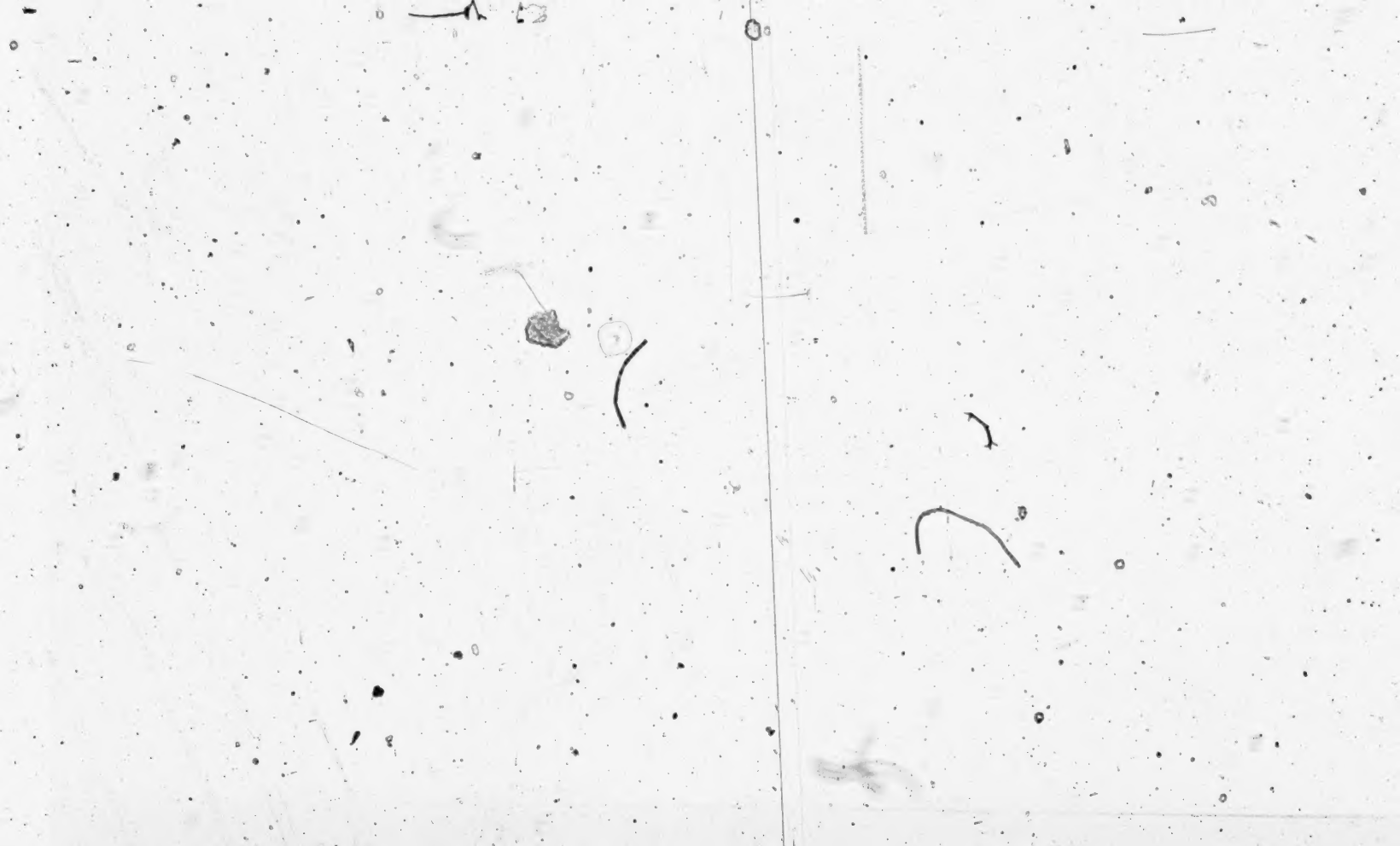
A. That is correct, sir.

Mr. Clark: They always do that in Baltimore, Mr. Farwell. They never use charts here. They make these sketches like this (indicating Exhibit 5) and hand them to the witness.

A. That is customary.

Mr. Farwell: I suppose that is the sensible way to do it. I offer the sketch in evidence as "Eastern Glade McDonald Exhibit 11."

(Here follows one photolithograph, side folio 299a)

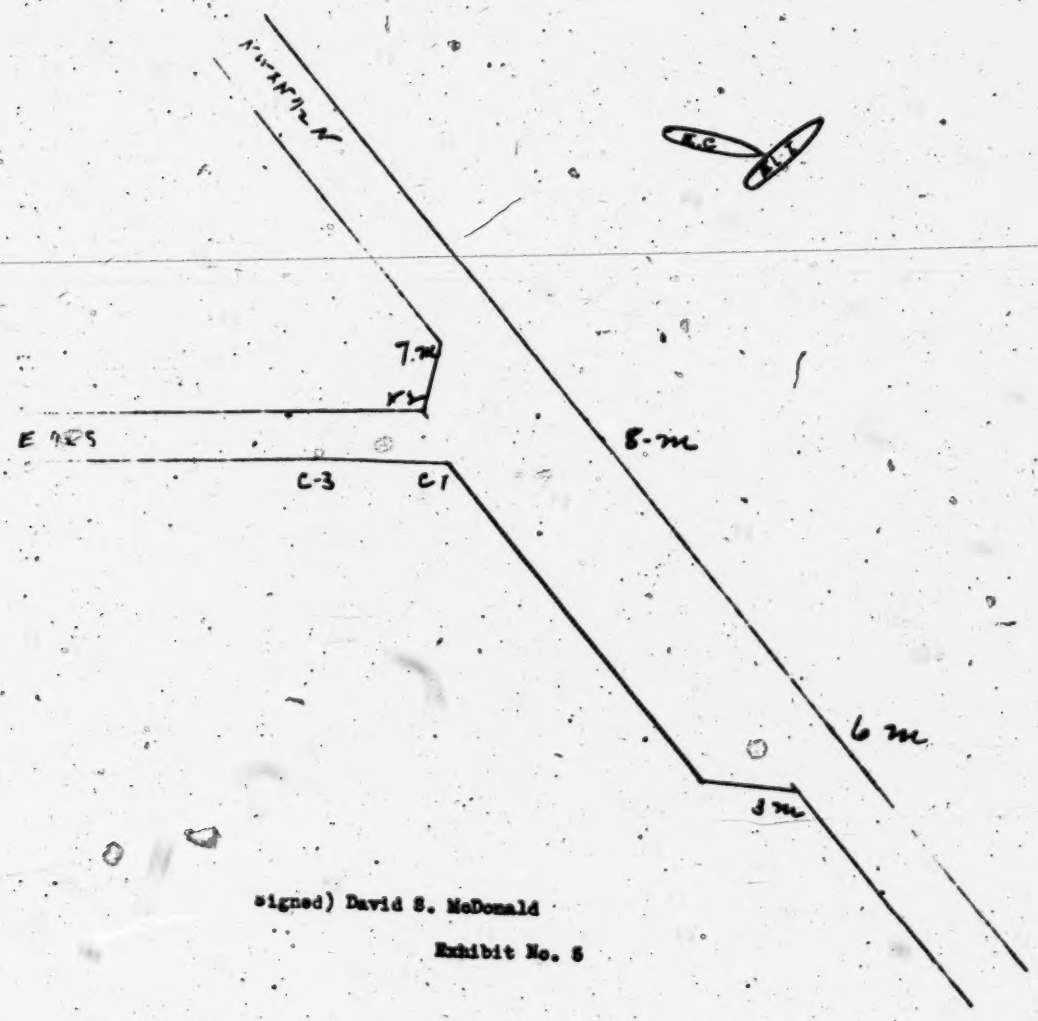


299a

EXHIBIT No.5

EASTERN GLADE McDONALD No. 11.

COPY



(signed) David S. McDonald

Exhibit No. 5

Q. Who, on your ship, made a note of any of the times of the happening of events?

A. I did.

Q. On what?

A. Just rough paper is all, sir.

Q. What did you do with it?

A. Well, I have no idea. I could not possibly begin to tell you.

Q. Have you ever been in a collision case before?

A. Why, not of two vessels, not of two steamships, no, sir.

Q. What kind of a collision case could you have without two vessels?

A. A collision between a steamer and a barge.

Q. Don't you know it is important to keep the memoranda ——

A. The Morgan Line does not keep a rough log. They keep everything on a slate and that slate is erased immediately after the smooth log is written.

Q. Well, on this particular occasion you made some notes, [fol. 300] put down some times, on a piece of paper.

A. The only times that I recall are the time of passing Fort Carroll and the time of the collision.

Q. Well, you put those down on a piece of paper?

A. Just stuck them down on something or another. I do not know what it was offhandedly now. It must have been some scrap of paper.

Q. Did you transfer that to the slate?

A. No, sir, the chief officer writes the log book, smooth. Oh, to the slate?

Q. Yes.

A. There was no slate kept of harbor movements, sir.

Q. You must have turned that over to the chief officer.

A. I told him of the times, that is all.

Mr. Farwell: May I see the log book, please.

Mr. Clark: Here it is.

By Mr. Farwell:

Q. Do you remember the entry that you made regarding passing Fort Carroll?

A. I think I timed Fort Carroll at 5:31, sir, is my recollection.

Q. You remember what you entered as the time of collision?

A. 5:40.

Q. This book that I have which is entitled "Ship's Log, S.S. El Isleo, from June 25, 1935, to —— —, ——," the termination of the log book not being entered, is the only deck log that was kept on the ship.

A. Yes, that is the only deck log on the ship for that voyage. That is right, sir.

[fol. 301] Q. And that was written by the chief officer?

A. Correct, sir.

Q. What was the chief officer doing at the time of collision?

A. Dinner, sir.

Q. He did not know anything about the collision, as to what happened?

A. No, not as to events that transpired prior to the collision because he was in the mess room eating.

Q. Did you give him this narrative or statement (indicating writing in log)?

A. I gave him what notes I had, yes.

Q. Did you write it out for him?

A. Well, I do not recall whether I did or not now, sir; the way I recall it was just the times jotted down on an old piece of paper.

Mr. Clark: Let the record show that counsel for the Eastern Glade examined El Isleo's deck log.

By Mr. Farwell:

Q. You stated, Mr. McDonald, that the angle of collision was forty-five degrees, that is, between the starboard side of the Eastern Glade and the port side of El Isleo?

A. Yes, roughly that. That is, stern to stern, forty-five degrees angle between the sterns.

Q. Yes, between the sterns.

A. Yes. It might have been a little bit more or less.

Q. In other words, just before the collision the Eastern Glade was approaching you at an angle of four points on the port quarter?

A. Very roughly that, yes, sir.

Q. About four points abaft your port beam?

[fol. 302] A. Yes. She was an overtaking vessel by, roughly, four points.

Q. At that time?

A. Yes.

Q. Was there more than one contact between the vessels?

A. Well, there seemed to be sort of a dragging separation there. They were in contact for a matter of seconds during which time the bow of the Glade dragged down along our side.

Q. You were swinging to your starboard?

A. That is right.

Q. And your stern, relatively, was going to port?

A. Relatively speaking, yes, sir.

Q. Now, did you notice that either just before the collision, or immediately after the collision, the bow of the Eastern Glade swung to her port?

A. No, sir. I could not say that I did, sir.

Q. Did you notice any contact between your stern, or your port quarter and the starboard side of the Eastern Glade?

A. There was none. By our port quarter I ask do you mean any point on our port side aft of the deck housing?

Q. Yes.

A. There was none.

Q. Well your port side scraped along the Eastern Glade?

A. Well, I should say that the Eastern Glade's bow scraped along our port side.

Q. Well?

A. There was a drag.

Q. Either the Eastern Glade dragged aft, or you moved forward?

A. That is right, sir.

Q. How far along your port side was there any indication of contact?

A. There was.

Q. I say, how far along, over what length?

A. Over a length of, possibly, ten feet.

[fol. 303] Q. Did you examine El Isleo after the collision?

A. I did, sir.

Q. Where on El Isleo was the most forward point of contact?

A. The most forward point of contact was right abreast of the galley door, almost right square in line with the Plimsoll mark.

Q. The Plimsoll mark is amidships, isn't it?

A. That is right, sir.

Q. Was this most forward indication forward or abaft of the Plimsoll mark?

A. To my recollection the Plimsoll mark was dented in at the point of contact. Now, I may be wrong a few inches one way or the other.

Q. Then the indication of contact extended aft from that point?

A. That is right, sir, the last indication being the breaking of the forward boat davit on that side.

Q. How far aft of the Plimsoll mark was the forward boat davit?

A. As I said before, ten or fifteen feet, possibly twenty feet.

Q. You have cargo hatches?

A. Yes, sir.

Q. Below the main deck or the upper deck?

A. Yes, side ports, you mean?

Q. Yes. They have hinges that project out?

A. Yes.

Q. Did you notice any indication on those hinges of contact?

A. No, there was none.

Q. What color was the side of El Isleo?

A. Black.

Q. Any white paint anywhere?

A. Deck housing all white.

Q. Was the deck of the Eastern Glade higher than your main deck or lower? Did you notice that when the ships [fol. 304] were together?

A. The deck of the Eastern Glade, the part that I saw of it, would naturally only be the forecastle, and it was almost to the same level as our bridge—not quite. We could look down on her forecastle head from our bridge but you could not have looked onto her forecastlehead from our boat deck. You would have been up looking.

Q. Now, this black paint extends on the port side up to how high?

A. Up to the main deck, sir.

Q. The main deck?

A. Yes, sir.

Q. And above that is the boat deck?

A. Yes, sir. Above that is the galley deck and then on top of the galley deck is the boat deck and then on top of the boat deck is the bridge.

Q. So that your main deck was one, two, three decks lower than the bridge?

A. Two decks lower than the bridge.

Q. Is the bridge on the same level as the boat deck?

A. No, sir, it is above, but there is the boat deck and then the main deck.

Q. Well, I want to try and get this clear on the record. You start with the main deck?

A. Yes, sir.

Q. Now, what is the next deck above that?

A. Boat deck.

Q. What is the distance between those two, approximately?

A. Ten feet.

Q. Then, what is the next deck above the boat deck?

A. The bridge deck.

Q. That is about ten feet?

A. Roughly.

Q. Where is the galley deck?

A. On the main deck.

[fol. 305] Q. I thought you mentioned a galley deck.

A. I call it the galley deck, but it is the main deck, properly named, I presume.

Q. So that there is just the main deck, boat deck and bridge deck?

A. Yes, sir.

Q. And there is no separate galley deck?

A. No, sir. I call the main deck the galley deck.

Q. You were painted black up to the main deck and from the main deck up you were painted white?

A. That is right, sir.

Q. Do you remember the day after the collision doing any work painting the side of the ship? Did you have anything to do with that?

A. No, sir. That is the chief officer's domain. I do not recall whether there was any painting done or not.

Q. Didn't you see men working on the port side after you got up to Baltimore, painting out the marks of the collision, painting them over?

A. But the marks of collision could not have been painted out because there was an indentation in the hull.

Q. Well, painting the side of the ship where the marks were?

A. No, sir, I do not recall that. No, sir. It may have been done——

Q. But you had nothing to do with it?

A. I had nothing to do with it if it was done and I do not recall having seen it being done.

Q. Your engines were stopped, or at least the signal was sent on the telegraph to stop the engines just before the collision?

A. That is right, sir.

Q. What was the next signal that was given to the engine room, do you remember?

[fol. 306] A. Offhandedly I do not recall what the next signal was given, but I think it was an ahead bell.

Q. You remained stopped then?

A. Until after the collision?

Q. Yes.

A. That is right, sir.

Q. What did you do from the time of the collision on, what was the first thing that you did after the collision?

A. The first thing I did at the time of the collision was to call the quartermaster's attention to the bearing of Dundalk Air Beacon.

Q. Then what did you do after that? Did you go aft and look at the damage, or anything?

A. I did not leave the bridge, no, sir.

Q. You remained on the bridge?

A. I remained right strictly on the bridge.

Q. On the bridge?

A. That is right, sir.

Q. Your recollection, I take it, is not distinct, is not clear whether the engines were reversed?

A. Our engines were not reversed to my recollection at all at any time during the proceedings.

Mr. Farwell: That is all.

Mr. Clark: Mr. Farwell, about this log book, if you propose to offer it in evidence, I would like to have this witness read it over and see if he agrees with the entries. If you are not going to offer it in evidence I see no useful purpose that is going to be served by going into it because I cannot, clearly, offer it in evidence as the witness did not even write it and the chief officer, who did write it, knows [fol. 307] nothing about it. But if you are going to offer it at some time, I would like to have him read it and say whether it agrees with his views or whether he has any corrections to make in it.

Mr. Farwell: Are you going to call the chief officer?

Mr. Clark: I will, if you want me to, but, I assure you, he says he knows nothing about it.

Mr. Farwell: The only thing he did was merely to write this from information.

Mr. Clark: Yes, but I am quite willing to call him, if you want me to, although I did not intend to.

Mr. Farwell: Then, I think you had better question this witness about the log now.

Re-direct examination.

By Mr. Clark:

Q. Just look at the bottom half of this page under December 19th. Now, looking at El Isleo log on December 19, 1935, read that over and see if it agrees with your recollection of what happened, times and facts; and if you do not agree with it in any respect, please tell us about it.

A. It is substantially correct, so far as I can see. He has got "5:31, Fort Carroll; 5:40, collision between the Eastern Glade and the Isleo when close to Red Buoy No. 8-M." I should call that (indicating) close to Red Buoy No. 8-M, shouldn't you, sir?

[fol. 308] Mr. Clark: When the witness then said, "I should call that close to Buoy 8-M," he referred to the chart El Isleo McDonald Exhibit A.

A. I presume this (indicating) is the end of a sentence here.

Q. Where do you refer?

A. After the "8-M."

Q. Is it?

A. It looks like it.

Q. Well, it looks like a period there.

A. He started the next off with a capital letter, at least. That is what I am going by.

Mr. Farwell: He starts the earlier sentence with a capital. The "W" in "When" begins with a capital also.

A. It seems to, yes.

By Mr. Clark:

Q. Well, you are assuming that the sentence ends, as you pointed out, with "8-M"?

A. That is what I am assuming to be the end.

Q. On the fourth line of the lower half of the page?

A. That is what I am assuming to be the end of the sentence.

Mr. Farwell: There is an entry here of "5:31," with a ditto mark indicating "P. M., Fort Carroll," with a horizontal line. What does that horizontal line mean?

A. Indicating "Abeam" passing Fort Carroll.

[fol. 309] Q. Is that the way you indicate "Abeam"?

A. There are so many different ways. It is not the way I do, no, sir, but it seems to be the way Mr. Henske does. I indicate that with an "ab."

Q. Is that the customary way?

A. I just write "abm." Mr. Henske evidently writes it this way (indicating). There was no other notation that could be made of Fort Carroll except the time she was abeam.

Mr. Clark: I asked you——

The Witness: I wanted to look to see if we can find an abeam passing, but he does not indicate abeam at all. He just lets it go. "10:25, Thimble Shoals Light; 10:43, Fortress Monroe."

Mr. Farwell: I think we might have that on the record.

Mr. Clark: An examination of the previous page of the log shows no use of the word "abeam" or "ab," abbreviation of "abeam."

Mr. Farwell: Or a horizontal line, or dash, or any other indication.

Mr. Clark: I ask that the log be marked for identification "El Isleo Exhibit McDonald B."

Q. Have you read through that entry?

A. Yes.

Q. It is correct, is it, substantially correct?

A. Substantially correct.

Q. I do not believe I asked you about the visibility, how was the visibility?

A. Excellent, sir.

[fol. 310] Q. Did you, as pilot, approve of Captain Korn's orders?

A. Yes.

Q. The navigation was exactly as you would have carried it out?

A. I would have carried out the same maneuvers he did. Right, sir.

Q. This diagram which you made before the Local Inspectors, which is now marked "Eastern Glade McDonald Exhibit No. 11," at the time that was made, am I correct in understanding you had just that piece of paper before you that I hold in my hand?

A. Yes.

Q. You did not have a chart?

A. No, sir, did not have any chart.

Q. Is the point where you have marked the chart today, the chart being El Isleo McDonald Exhibit A, is that substantially the same point you marked at that time?

A. Yes.

Q. Neither one to scale?

A. No, sir, neither one to scale.

Q. I see this one today is—I will point out to you that it is nearer, it is nearer opposite the entrance to Curtis Bay Channel than this one, isn't it?

A. In position on the chart, but not as relating to the size of the ships that are drawn.

Q. They are comparatively the same?

A. Comparatively speaking they are the same.

By Mr. Farwell:

Q. And you say they are both correct?

A. They are both correct. They are so many ship lengths away from the entrance, roughly.

[fol. 311] By Mr. Clark:

Q. With the chart before you that you have today, you can make a better visualization of the whole subject than you could with just a piece of paper like that (indicating).

Mr. Farwell: Objected to.

A. Of course.

By Mr. Clark:

Q. Will you stand by this chart of today?

A. I will stand by it, yes, sir.

By Mr. Farwell:

Q. And, of course, at the time you made this diagram before the Local Inspectors, that was quite a while ago, wasn't it?

Q. And a long interval of time has elapsed since then?

A. That is right, sir.

Q. Your recollection was clearer then?

A. No, sir, I would say it is better today than it was at that time, for the simple reason I have been trying ever since the darn thing happened to reconstruct it, and try to get some sense out of it.

Q. You have been studying it over?

A. I have been trying to get some sense out of it.

Q. You have been working over it in an effort to see where your ship should be placed?

A. No, sir, not that, but I tried to figure out what the East-
[fol. 312] ern Glade's ideas were, or what the moves were made for. I knew what ours were made for, but I swear I could not figure out what theirs were made for.

By Mr. Clark:

Q. The two are substantially the same.

A. Yes, there may be a difference there of one hundred and fifty yards in the diagram which I consider to be mighty close for offhand work. There isn't any more than that.

Mr. Clark: Your witness.

Recross-examination.

By Mr. Farwell:

Q. I have a question or two to ask: Mr. McDonald after the Isleo's danger signal was blown, at the position marked "A" on Exhibit A, your ship was swinging to starboard, the head?

A. At the time of the danger signal?

Q. Well, was it at the time of the danger signal?

A. No.

Q. But after?

A. Very shortly afterwards. As soon as we could clear Buoy 8.

Q. But before you got up there you hauled over?

A. Yes.

Q. And at that time was it too late to port your helm and go under the stern of the Eastern Glade?

A. Why, it was too late to avoid collision in that particular case by porting, that is right, sir.

Mr. Clark: You mean left rudder?

[fol. 313] A. Yes, sir.

Mr. Farwell: Yes.

The Witness: He is using port and starboard direct.

Q. Well, as you look back on it now, would not collision have been avoided if you had given "Left rudder"?

A. Off the record, hindsight is much better than foresight. It could have been, yes, sir.

Mr. Farwell: Put the answer in. I think that is a good answer for Mr. Clark. That is all.

Redirect examination.

By Mr. Clark:

Q. After a collision, Captain, you can always figure out——

A. —ways and means to avoid it.

Q. No collision would occur if you do not leave the wharf, would it?

A. That is a fact.

Recross-examination.

By Mr. Farwell:

Q. How wide is that channel at Buoy 7-M, the Fort McHenry Channel?

A. Six hundred feet at Buoy 7-M.

Q. There is plenty of room there for two vessels to go up abreast?

A. Absolutely. As I stated before, we could have gone up arm in arm.

(Examination of witness concluded.)

[fol. 314] (Signature of witness waived by stipulation.)

Mr. Farwell: I offer in evidence the Pilot Rules and Local Inspectors Regulations as Exhibit 12.

It is stipulated that a copy of the pilot Rules may be used

Thereupon HARRY G. EBERLY, a witness of lawful age, produced on behalf of the steamship El Isleo, having been duly sworn, testified as follows:

Direct examination.

By Mr. Clark:

Q. You are an engineer officer?
A. Yes.
Q. What license do you hold?
A. First assistant.
Q. How long have you held it?
A. Well, you mean how long have I held a marine license?
Q. Yes.
A. About fifteen years but I had the first assistant's license about two months now.
Q. You were on El Isleo at the time of collision with the Eastern Glade?
A. Yes.
Q. Were you in the engine room?
A. On watch.
Q. Who else was in the engine room?
A. An oiler.
Q. Do you remember his name?
A. Jim Pendergrast.
[fol. 315] Q. Were you operating the engine?
A. Standing by the throttle handling the engine.
Q. Did you receive the orders?
A. Yes.
Q. Did you operate the orders as they came down?
A. Yes.
Q. Did you make a record of those orders?
A. Yes.
Q. What did you make them in?
A. Bell book.
Q. Where is that bell book now?
A. Aboard the ship.
Q. What is this book I now show you?
A. Engineer's log book.
Q. It is the smooth log?
A. Yes.
Q. Just look over the record here and see if this is a correct transcript of what appeared on your bell book (handing book to the witness); when asking the witness this question

I want it to appear on the record that the bell book is not here at the present time, as we are taking this testimony in the Lord Baltimore Hotel. The bell book will be produced in order that the entries in the original record made by this witness can be compared with the entries in this log book.

A. It is.

Q. What were the orders to the engines from the "standby" order—what was your standby order?

A. What do you mean by that?

Q. The standby order at the time——

A. You mean the next bell?

Q. What is the standby order, when did you get "standby"?

A. You mean what time?

Q. Yes, what time is it according to the record?

A. 4:58.

Q. What was your next order?

A. Slow, 5:02.

[fol. 316] Q. Next?

A. Half speed, 5:06.

Q. Go on with the rest of the entries.

A. Ahead, full ahead, 5:0——

Q. That is a "7," I guess?

A. Slow ahead, 5:09.

Q. What is the one before that?

A. That is supposed to be 5:07.

Q. What does it read?

A. "Ahead full, 5:07."

Q. What is the next?

A. Ahead slow, 5:09. Ahead, full, 5:12. Stop, 5:39. Ship hit, 5:39. Slow ahead, 5:42. Full ahead, 5:50. Slow ahead, 6:04. Stop, 6:08. Slow ahead, 6:10. Half ahead, 6:11. Slow ahead, 6:20. Half ahead, 6:25.

Q. That is not "25"?

A. Here (indicating), I mean. Slow ahead, 6:28. Stop, 6:29.

Q. That is long after the collision, isn't it?

A. Yes, that is proceeding up to the dock.

Q. That is sufficient for our purposes at present. I see you have "Stop, 5:39. Ship hit, 5:39."

A. Well, we were operating under a full speed bell making, about, I remember now, because I had just counted the revolutions and called attention to the oiler that it was about

Q. How many boilers had you operating?

A. One boiler with a full head of steam, 190 pounds. Then I got a Stop bell and stopped the engine.

Q. And how soon after that was the collision?

A. In about twenty seconds she was hit, in the same minute.

Q. What speed were you making under those conditions?

A. Under those conditions, with those revolutions, about six knots, I should say, or seven, something like that.

[fol. 317] Q. And you would say it was about twenty seconds between the "Stop" and the collision?

A. Yes, because I had time to stop the engine and reverse it and waited for another bell when she was hit.

Mr. Clark: Your witness.

Cross-examination.

By Mr. Farwell:

Q. You have no independent recollection at this time what bells were given or the times, have you?

A. Not unless I looked in the book because I have got one thousand bells since that time and I couldn't say, but as soon as I looked at it it comes to my mind again because the collision throwed me up against the log desk and something like that you don't forget.

Q. You said there was an oiler on watch?

A. Yes.

Q. Where is he?

A. He was logging the bells in the bell book at that time.

Q. Where is he now?

A. I really don't know. The last letter I had from him he was on a Standard Oil tanker.

Mr. Clark: What is his name?

A. I gave that before, Jim Pendergrast. He lives in Galveston.

By Mr. Farwell:

Q. How long ago did you hear from him?

A. I guess about four months ago. I know his address [fol. 318] is Galveston. I see his people every trip when I go there.

Q. And the oiler logged the bells?
A. Yes.
Q. You didn't have anything to do with that?
A. I answered the bells.
Q. You handled the telegraph?
A. Yes.
Q. And you handled the throttle and the reversing gear?
A. Yes, and he handled the pencil.
Q. He was standing at the log desk writing these orders in the bell book?
A. Yes.
Q. What kind of engines has El Isleo?
A. Triple expansion.
Q. What kind of reversing gear have you?
A. The link motion.
Q. Ordinary type of reversing gear?
A. Yes.
Q. When you were running under your full speed ahead signal, did you have the throttle wide open?
A. No, sir.
Q. How many turns would it take to close the throttle?
A. Oh, we don't close the throttle. We just close a lever, just bring the lever up and the lever closes off the throttle by gag.
Q. The way you were running then, in order to stop the engine you would bring the lever up and that would shut off the steam?
A. Yes, in a split second. That shuts it off in a split second. If you had the throttle you would have to stand there and turn it.
Q. That is much quicker than using the wheel throttle?
A. Yes.
Q. And then when you got the stop bell, what did you do with your links, your reversing gear?
A. I rocked the links, and moved the engine so she is off center so she will start again on the next bell.
[fol. 319] Q. That will not be very clear when it comes to be read. What did you do with your reversing engine when you got the stop bell? Explain it so that any one reading it will understand it.
A. If I am operating under a full speed bell ahead and I get a full speed bell astern, I have to stop the engine, shut the steam off, stop the engine, and then reverse it with the links——

Q. Now, this is the question: On this particular day you got a full ahead bell at 5:12 and you continued to operate under that full ahead bell until "Stop" at 5:39?

A. Yes.

Q. Now, then, you have explained that in order to shut off the steam all you had to do was to raise the lever and that takes but a split second?

A. Yes.

Q. What else would you do?

A. That is all unless the engine stops on center and I would move my links to get it off. I would not bother the reversing gear at all if the engine happened to stop right.

Q. Do you remember whether you had to move the links on this occasion?

A. No, sir.

Q. You have no recollection of that?

A. No, sir.

Q. Where was the chief engineer on this trip from Sparrows Point to the Atlas docks in Baltimore?

A. He was not aboard the ship but there was a man acting chief engineer with a chief engineer's license who was aboard the ship.

Q. Was that the first assistant?

A. Yes.

Q. Where was he?

A. He was in the mess room eating his supper at the time of collision.

Q. What was your position in the ship?

A. Third assistant.

[fol. 320] Q. Where was the second assistant?

A. Ashore.

Q. So that there were just the first assistant and you among the engineer officers?

A. Yes.

Q. What is your normal full watch in the engine room?

A. At sea?

Q. Yes.

A. Four hours on and eight hours off——

Q. No, I mean, how many men constitute a full watch?

A. Three men, engineer, oiler and a fireman.

Q. Just one fireman to fire two boilers?

A. Yes.

Q. On this particular day what job did the oiler have besides writing in the bell book?

A. Oil the engine every twenty minute rounds.

Q. Did you see him do that?

A. Yes. It is my business to see him do it.

Q. What job did you have to do?

A. Handle the throttle.

Q. Is that all?

A. That is all you can do, stand by the throttle.

Q. Do you have anything to do with oiling the engine or feeling the bearings or going around looking at things, or anything like that?

A. Not when I am answering the throttle. You can not leave the throttle to feel a bearing at a time like that. When you are all clear you can do that.

Q. Of course, when you got your "Ahead full," at 5:12, you were all clear then?

A. I was all clear, but you never can tell proceeding up a channel at night. You darsn't leave the throttle or the telegraph.

Q. You stood right there?

A. Right there. Did not move a step from it.

[fol. 321] Q. When did the oiler go around to oil the engines?

A. Whenever it is time to make a round.

Q. When was that, with reference to 5:12?

A. In about eight minutes it would have been time for him to make another round.

Q. That would mean it was about 5:20?

A. Yes.

Q. Does he make his rounds according to the clock?

A. At sea he does, right on the clock, right on the minute, but in ports this way, lots of times maybe we shift from one dock to another before it is time to make another round.

Q. Have you any recollection whether the oiler did make a round somewhere around 5:20?

A. Well, that I couldn't say.

Q. And you have no recollection of it?

A. Because when there were bells he was right there with me at the bell book.

Q. Don't you see, that is the very point: at 5:12 you got "Ahead full," and you didn't expect to get any more bells until you got up to your pier, did you?

A. You can never tell. If something happens you have got to slow down and you might get all kind of bells, some-

times three or four hundred bells, from Sparrows Point to Miller's Wharf.

Q. Do you mean to say that the oiler stood right at the log desk there waiting for bells after you got your "Ahead full" at 5:12?

A. No, I don't say that. He just happened to be around there. Lots of times he might walk around and look at the engine, look at his water glasses and come back to the log desk.

[fol. 322] Q. What was he doing when you got this stop bell?

A. He was standing right at the log desk, happened to be right there.

Q. Have you a distinct recollection of that?

A. I remember that, yes, sir.

Q. He was not around oiling the engine at that time?

A. Not at that time. He was right close to the log desk.

Q. How long does it take for the oiler to make a round oiling the engine?

A. About three or four minutes.

Q. Doesn't he have to go up on another platform?

A. No, sir, he has to go on another grating, but that don't take long.

Q. And he can do all that and be back in three or four minutes?

A. Yes, if he is a good oiler, he can. When I was an oiler I always made a round all around in three minutes.

Q. You are an exceptional man. I am asking about this particular oiler?

A. When it was a twenty minute round I would make my round in three minutes and would have seventeen minutes to stand around the ventilator and loaf. You have got to know where to put it and when and how much.

Q. Sometimes, Mr. Engineer, you know when you hurry things like that——

A. You got to know where to put it and how much and when to put it. If something is running good you can cut down the oil on it.

Q. You had a full head of steam on?

A. Yes, that is as much as we can carry in port, maneuvering around. We never carry in port a real full head. Two [fol. 323] hundred pounds is a full head but as much as we ever carry maneuvering around in port——

Q. Your engineer's log says 200 pounds to the boiler?

A. Yes.

Q. That is your allowed steam pressure?

A. Inspectors allow us that.

Q. That is maximum pressure?

A. Yes.

Q. That is what you had on this occasion?

A. We might have had a little less because when maneuvering we can not carry it right up.

Q. Is your log book wrong?

A. Well, I wouldn't say the log book is wrong, no.

Q. I indicate to you the entry in the fourth column at the top of the page under the heading, "Boiler," is "200 pounds." There are the words "daily average," and below that, "200 pounds." Does that relate to this particular day or to some other time?

A. Well, you couldn't carry 200 pounds maneuvering. You are bound to let your steam vary. No living person could carry that steam right up to the dot.

Q. Why did you enter 200 pounds' pressure, then?

A. You will have to see the chief about that. That is his signature, his log book.

Q. Didn't you give him the information when you were on watch so that he could write up the log book?

A. Yes, we do that.

Q. Would he put down 200 pounds unless you gave him the information?

A. I couldn't say that. Another thing, whenever we are operating under bells we always step our steam pressure down ten or fifteen pounds so that it don't blow and pop off.

Q. Here is an entry that your revolutions were 75 per [fol. 324] minute. That is just to the left of the 200 pounds, and the daily average was 73.1. Is that right or wrong?

A. Yes, but this is not the log for maneuvering up the channel. This is the log from Baltimore to Norfolk and this is just the remarks of the collision.

Q. It is headed December 19th and also December 21st.

A. This is December 19th, these bells here, this is on the way to Norfolk, December 21st.

Q. Have you any entry——

A. This is right here on the way from Baltimore to Norfolk.

Q. Have you any entry in any book showing what your boiler pressure was at any time from 4:58 up to 5:40?

A. No, sir.

Q. On December 19th?

A. No, sir. That is something we don't keep track of. The only thing we keep track of is the bells and that is put in the bell book and then copied into some other log.

Q. What is your normal full speed revolutions at sea?

A. Seventy-eight revolutions. If we can get good fuel oil we can make it anywhere from 74, 76 and 78. It all depends.

Q. What speed does that give you through the water?

A. I am not a navigator. I couldn't tell you. I can guess at it and tell you around 12 knots.

Q. On this particular day, December 19th, were you loaded or light?

A. We were just about—we was not loaded and we was not light—we were going back to load more cargo.

Q. You had part cargo?

A. Yes.

Q. And under those conditions would 75 revolutions give [fol. 325] you about 12 knots?

A. Well, I could not say there, with the wheel partly out of the water. I do not know whether it would or not.

Q. Do you know whether the wheel was partly out of the water?

A. Well, it must have been if the ship was not loaded. That would be just guessing at it. I noticed in leaving the ship today it was partly out of the water.

Q. You do not know what your draft was?

A. No, sir.

Q. On December 19th?

A. No, sir. You can see here (indicating): this was Baltimore to Norfolk log; 13 hours and 54 minutes. That is what you were looking at.

Q. It is dated up in the upper right hand corner of page 67, December 19th?

A. Where this is December 19th in red ink, there is also this collision December 19th in red ink. That (indicating) is about our running time from Baltimore to Norfolk, around fourteen hours.

Q. El Isleo is single screw?

A. Yes, sir.

Q. Do you know what the pitch of the propeller is?

A. No, sir. I did know but I have forgotten that.

Q. Do you know how many revolutions you make for one knot?

A. No, sir.

Q. Do you have any entry in this log book showing what your speed is in knots, I mean on other occasions?

A. No, sir.

Q. What was the reason you had only one boiler in use?

A. We were making repairs on the other boiler.

Q. What was the nature of those repairs?

[fol. 326] A. Overhauling check valves, stop valves, cleaning the boiler.

Q. Does that mean you only had half the steam pressure available?

A. No, sir.

Q. Well, if it had been necessary to back to avoid a collision, and you wanted to back full speed, you had only one boiler?

A. Yes, sir.

Q. You could not get as much backing effect as if you had had two boilers?

A. No, sir.

Q. Well, you couldn't back very well, could you, with only one boiler?

A. Yes, we were backing this morning on one boiler for four minutes and made 74 revolutions astern, but you couldn't keep that up no more than five or ten minutes. You very seldom get a reverse bell for any length of time, anyhow. When we are operating under one boiler we generally keep the steam up so that when we do get a bell we can give it to her, and then we usually get a slow bell.

Q. But although you had only one boiler on this occasion you did not have the steam up full?

A. I said it was 190 pounds.

Q. Two hundred is your normal head of steam, isn't it?

A. Yes.

Q. Although you had only one boiler you didn't have your full head of steam up?

A. We never carry a full head of steam in maneuvering around in close places.

Q. In whose handwriting are these entries in the log book?

A. In this log book?

Q. In this log book that I have before me.

A. Mr. Wilson, chief engineer.

Q. Did you hear any whistles blown by your vessel?

[fol. 327] A. I heard some whistles but I could not tell which vessel was blowing them.

Q. What whistles did you hear?

A. I don't remember for sure, but I believe I heard four whistles.

Q. Can't you tell us whether they were from your vessel or some other vessel?

A. I would not remember now where it was. We don't pay any attention to whistles. In fact, I do not even know the whistles. They come from passing tugboats and other ships tooting.

Q. You were down in the engine room the entire time from leaving Sparrows Point up until the collision?

A. I was on watch at the time of the collision.

Q. Well, that is not what I asked you. I said, were you in the engineroom during that entire time?

A. Well, I don't remember that.

Q. When did you go on watch?

A. Well, we don't have no watch in port. I went down below a few minutes before the standby bell there. We do not stand no watch in port, you know.

Q. Did you go up on deck?

A. If I came up on deck the other engineer relieved me at the throttle, but as to that I don't remember. That is always the case.

Q. You have no recollection whether you stayed down in the engine room or were relieved during that time?

A. The entire time from Sparrows Point to Miller's Wharf?

Q. Yes.

A. I don't remember that, because when the other engineer was eating his supper, naturally somebody had to be below. If I had been eating my supper he would have been below.

[fol. 328] Q. Had you had your supper?

A. I don't remember that.

Q. What time did he have his supper?

A. He was eating supper at the time of the collision.

Q. What time does he ordinarily have supper, 5:30?

A. Well, that is something that it all depends. If we are ready to leave the dock at supper time, we either have supper a half hour earlier or a half hour later. In this particular case we were leaving dock right around mealtime and

we did not start serving meals until the ship got clear of the dock.

Q. Ordinarily, it would have been the first assistant's job to be down in the engine room instead of you, wouldn't it, when you are shifting?

A. No sir. A licensed man down there. It don't make any difference who it is.

Q. I say, ordinarily, when you are shifting El Isleo, the first assistant would have been down there when you leave the pier?

A. He was down there when we left the pier, but after we were all clear he come up to eat his supper. You generally have time to eat from Sparrows Point to Miller's Wharf. We all do that.

Q. Were you down there with him?

A. I was down with him when we left the dock.

Q. The two of you were down there?

A. Yes, always is. That is the law.

Q. Well, now, isn't it a fact that you are merely saying that the two of you were down there because you realize that that should be the case but you have no independent recollection of it?

A. Yes, I do have independent recollection. We were both down there when we left the dock.

[fol. 329] Q. How long did the first assistant stay down there?

A. Until we were all clear of the dock. You see, we do this every day in the year when we are docking in here.

Q. Well, what effect does that have, doing it every day?

A. It doesn't have any effect that I know of, only a matter of your work and your routine.

Q. As a matter of fact, you have no very distinct recollection of what happened except that there was a collision?

A. Certainly, I know what happened. I can tell you everything that happened: an hour before we left the dock we opened our boiler stops, warmed up the engine and after that tried out the steering engine, seeing that everything was ready to leave the dock. We went down below and stood around and waited for the standby bell and when we got that we adjusted a few other little things and waited for the first "Go ahead," or, "Go astern" bell, whatever it might be.

Q. That is your regular routine?

A. Yes.

Q. You are now saying that is what you did because it is your regular routine, aren't you?

A. That is your work, you have got to do it. Nobody else is going to do it for you.

Q. Do you remember whether it was raining in the afternoon that day?

A. Whether it was raining?

Q. Yes.

A. I couldn't tell you that.

Q. Or snowing?

A. I couldn't tell you.

Q. Now, all this that you testified to as to what you did an hour before, and so forth, that is your regular routine, isn't it?

A. Yes.

[fol. 330] Q. You have no distinct recollection today that on December 19, 1935, you did that?

A. Certainly, I have.

Q. Well, then——

A. In 1935? Why, I can go back further than that.

Q. Then why is it you can not remember whether you remained in the engine room or came up on deck?

A. Well, I was at the throttle at the time of the collision.

Q. That is it, that is what you remember?

A. I remember that.

Q. You know that?

A. Whether I stepped up or left the engine room when the ship was all clear of the dock and ate my supper, I don't remember that.

Mr. Farwell: That is all.

Redirect examination.

By Mr. Clark:

Q. The full watch, as I understand you, is the engineer, oiler and fireman?

A. Yes.

Q. And that full watch was on from the time you left the dock until the collision, is that true?

A. Well, there is really no watch in port.

Q. You were on watch, weren't you?

A. Yes, and the first assistant was on watch.

Q. And the oiler was on watch?

A. Yes.

Q. And the fireman?
A. Yes.
Q. All during that time?
A. Yes.
Q. You were not short-handed in your engine room?
A. No, sir.
Q. And all the bells that came down were executed as they came down and properly executed, is that right?

[fol. 331] Mr. Farwell: Objected to as leading.

A. Yes.

By Mr. Clark:

Q. And they were all recorded?
A. All put in the bell book.
Q. As they came down?
A. Yes.
Q. Were they correctly recorded?

(Objected to as leading.)

A. Yes.

(Examination of the witness concluded.)
(Signature of the witness waived by agreement of counsel.)

Mr. Clark: I now ask that the smooth engine room log be marked for identification, "El Isleo, Eberly, Exhibit No. C."

(Thereupon at 12:30 p. m., the taking of this deposition was concluded.)

[fol. 332] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

POSTAL STEAMSHIP CORPORATION, as Owner of Steamship Eastern Glade, Libellant,

against

Steamship EL ISLEO, SOUTHERN PACIFIC COMPANY, Claimant And Cross Suit

Deposition taken pursuant to notice, on behalf of the claimant, at the office of Messrs. Burlingham, Veeder, Clark

& Hupper, 27 William Street, New York City, November 27, 1936.

Appearances:

Messrs. Burlingham, Veeder, Clark & Hupper (Mr. Clark and Mr. White), for the Southern Pacific Company.

Messrs. Barry, Wainwright, Thacher & Symmers (Mr. Farwell), for the S. S. Eastern Glade.

It is stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived, stenographer's fees to be taxable.

[fol. 333] JULIUS JANSEN, being duly sworn and examined as a witness for the Southern Pacific Company, testified as follows:

Direct examination.

By Mr. Clark:

Q. You were quartermaster on El Isleo on December 19, 1935?

A. I was acting quartermaster, she don't carry a quartermaster, I was an A. B. but acting quartermaster.

Q. You have an A. B.'s certificate?

A. Yes.

Q. How long have you had it?

A. Since 1915, since they first came out.

Q. How long have you been following the sea?

A. Since I was fifteen years old.

Q. How old are you now?

A. Fifty-six.

Q. How much of that time have you been on Southern Pacific Company ships?

A. I must have been on El Isleo about eighteen months, I guess, when that accident happened.

Q. Were you on other Southern Pacific steamers?

A. In 1914, El Sud; in 1918 I was on El Valle.

Q. Were you in sail before you went into steam?

A. Yes, sir.

Q. About how many years in sail?

A. Up to 1906.

Q. Have you acted as quartermaster before?

A. Yes, sir.

Q. How many years since you started acting as quartermaster?

A. Four years in the United Fruit Company, and I was on an oil tanker—I don't remember now.

Q. It has been a great many years since you have been acting as quartermaster?

A. Yes.

[fol. 334] Q. You know how to handle a wheel?

A. Yes.

Q. Which command do you use now—old or new?

A. New command—right and left.

Q. Right and left instead of port and starboard and all those?

A. Yes.

Q. You remember this collision which occurred between El Isleo and the Eastern Glade in December, 1935?

A. Yes.

Q. Where was El Isleo that day—where did you leave from?

A. Sparrows Point.

Q. And bound where?

A. Up to the dock at the foot of Caroline Street, in Baltimore—Rukert Terminals.

Q. When did you go on the bridge—or when did you go to the wheel?

A. I couldn't say exactly what time.

Q. Do you remember whether you were at the wheel when you left the wharf?

A. No, sir, I wasn't at the wheel.

Q. Do you remember when you had your supper that night?

A. 5 o'clock.

Q. That was before you went to the wheel?

A. Yes.

Q. Do you remember whom you relieved at the wheel?

A. Yes.

Q. What was his name?

A. Charles Sanderson.

Q. Do you remember where El Isleo was at the time you relieved him?

A. It was clear on the Fort McHenry ranges.

Q. That is what she was on when you went to the wheel?

A. Yes.

Q. Who was on the bridge?

A. Mr. McDonald and Captain Korn.

Q. Whom were you receiving your orders from?

A. From the captain.

[fol. 335] Q. When you went to the wheel, what orders did the captain give you?

A. Keep on steering by the ranges, ranges right ahead.

Q. Keep on them?

A. Yes, sir—keep them right ahead.

Q. Is that the way you kept them?

A. Yes.

Q. Did you see this other vessel, the Eastern Glade, the vessel you came into collision with?

A. Yes.

Q. What lights did you see of her—the first light?

A. Green light.

Q. See any white lights?

A. Masthead light.

Q. You didn't see two?

A. No, sir.

Q. Did you hear any whistles from this other vessel?

A. I heard two blasts—two short blasts.

Q. That is from the other vessel?

A. Yes.

Q. What did you hear from your vessel, if anything?

A. Four short and one long.

Q. How long between the two blasts from the other vessel and the four short from your vessel?

A. From the time they exchanged whistles?

Q. She blew two?

A. Yes.

Q. And your vessel blew four and one?

A. Yes.

Q. How much time was there between these whistles from the other vessel and your vessel?

A. I don't know.

Q. Long or quick time?

A. Quick.

Q. You couldn't estimate it in seconds, could you—if you can't estimate, say so?

A. That is hard for me.

Q. After your vessel blew the four and the one, did you hear any signals from the other vessel.

A. No, I couldn t make out what she blew.

[fol. 336] Q. She blew something?

A. She blew something.

Q. But you couldn't make it out?

A. I couldn't make it out.

Q. Did you receive at any time any orders from the master of your ship to the wheel?

A. Yes, after the exchange of signals, hard right—wheel hard right.

Q. Did you execute that order?

A. Yes.

Q. Did you put it hard right?

A. Hard right.

Q. How was the wheel at the time of the collision?

A. We were steering—I don't know how the wheel was—I was keeping it on the ranges.

Q. Do you know whether it was hard right at the time of the collision?

A. No, sir, it wasn't hard right, at the time of the collision.

Q. What was it?

A. Might have been a little left or right, because you got to keep steering all the time to keep it on the ranges.

Q. You got an order for hard right, didn't you?

A. Yes.

Q. How much did you change your course under that hard right rudder?

A. About seven points.

Q. Where were you with reference to the channel at the time of the collision?

Mr. Farwell: I object to the witness testifying where they were with reference to the channel unless he knows where the channel was.

Mr. Clark: I will withdraw the question.

Q. Do you know where El Isleo was with reference to the channel at the time of the collision?

A. No, sir.

[fol. 337] Q. Did you hear any orders given on the bridge by the master for the engines?

A. Yes, shortly before the collision the captain said "Stop the ship."

Q. And then were you in a position to see the collision?

A. No, sir.

Q. You don't know what part of your vessel was struck by the other vessel?

A. I see afterwards, after I come away from the wheel I see, but I didn't know when I was at the wheel.

Q. When did you leave the wheel—how long after the collision?

A. About ten minutes—5:50 I think it was when I left the wheel.

Q. That was about how long after the collision?

A. Must have been ten minutes.

Q. Where was the other vessel then?

A. She was away astern.

Q. Did you remain there—by "you" I mean the ship—did your ship remain there or did she leave that place?

A. When I left the wheel she was still hard right.

Q. When you left the wheel, the wheel was still hard right?

A. Yes.

Q. You say that you got an order for hard right?

A. Yes.

Q. She changed course about seven points?

A. Yes.

Q. That is to the right, is it?

A. Yes.

Q. And when you left the wheel, it was hard right?

A. Yes, when the other fellow came to relieve me.

Q. It was hard right all that time?

A. Yes.

Q. It was hard right at the time of the collision?

A. Yes.

[fol. 338] Cross-examination.

By Mr. Farwell:

Q. When did you start using right and left on El Isleo?

A. We were using that long before it became a law.

Q. When did you start using it on El Isleo?

A. We started using it regularly when it became a law.

Q. You were on El Isleo eighteen months before the collision?

A. Yes.

Q. When, during that eighteen months, did you start using right and left instead of starboard and port?

A. When it became a law.

Q. How long before the collision had you been using it?

A. How long before the collision we been using it—all the time—all the time when we left Sparrows Point.

Mr. Clark: He means in months or years.

A. (Continuing.) Oh, I don't know what time it became a law, I don't know how many months.

Q. What kind of a steering gear has El Isleo?

A. She has steering gear aft and then wire cables.

Q. Is it a telemotor?

A. No, sir—steam.

Q. With wire cables?

A. Yes, like a reel.

Q. Do you know where the steering engine is?

A. Yes.

Q. Is it under the bridge or around the bridge, or is it aft?

A. It is aft.

Q. You came to the wheel after you had had your supper?

A. Yes, sir.

Q. And you had your supper at 5 o'clock?

A. Yes, sir.

[fol. 339] Q. How long were you at supper?

A. Well, I should say about twenty or twenty-five minutes.

Q. And then why did you go to the wheel instead of somewhere else?

A. Because the other fellow was ashore, there was nobody else on board, the other fellow was ashore.

Q. You mean the other quartermaster?

A. Yes.

Q. You have two A. B.s that act as quartermasters?

A. Three.

Q. And then when you came to the wheel, that was about 5.25, you think, or 5.20?

A. Between 5.20 and 5.25.

Q. When were you relieved after the collision—what time was it?

A. About 5.50.

Q. Why were you relieved at that time?

A. Because it was my watch below, I used to leave as soon as the other fellow—it was his watch—as soon as the other fellow was finished I was relieved.

Mr. Clark: You mean as soon as he finished supper?

The Witness: Yes, as soon as he finished supper he came back.

Q. You were given orders by the captain?

A. Yes.

Q. Did he say, while you were going up the channel, right or left, or tell you how to steer?

A. He told me to keep them on the ranges.

Q. Did he give you any other orders right or left?

A. Yes, if I get off the ranges he tell me.

Q. Do you remember your ship getting over to the port side of the range and you had to give right rudder to come back?

A. No, sir.

[fol. 340] Q. You don't remember that?

A. No, he keep saying you are right on, right on, all the time.

Q. But whenever you got off he gave you orders to come back?

A. Yes.

Q. How many times did you get off?

A. I never got off, he keep saying you are right on, right on.

Q. He also gave you orders to come back on the range, didn't he?

A. If I get off, yes.

Q. But he gave you orders to come back on the range at some time before the collision, didn't he?

A. No, sir.

Q. He didn't give you any orders at all going up there?

A. He told me you are right on the range, keep her so.

Q. How many times did he tell you that?

A. Oh, quite a few times.

Q. What does a few times mean?

A. Might be four or five times because he was standing right—we were right on the ranges.

Mr. Clark: Indicating with his hands.

Q. And the captain would turn around to you and say you were right on the range?

A. He didn't turn around, he was standing right in front of me, he didn't have to turn around, he look one side and tell me we were right on, I could see.

Q. You could see whether you were on the range, couldn't you?

A. Yes.

Q. You said in your direct examination, when Mr. Clark questioned you, that the captain gave you some orders to get the ship back on the range after you were off the range.

[fol. 341] Mr. Clark: I didn't hear him say that.

A. No, sir.

Q. You said that you saw the lights of the other ship, the Eastern Glade—you saw a green light and one white masthead light?

A. Yes.

Q. Did you see those lights before you heard the whistle?

A. No, sir, I didn't look up and I didn't see it then.

Q. What made you look up?

A. When I heard them blasts.

Q. Which blasts?

A. Two short blasts.

Q. You heard two short blasts, then you looked up and saw the lights of this steamer?

A. I see that steamer then.

Q. Then the next thing that happened was your ship blew four blasts?

A. Four short and one long.

Q. And then you got an order to do what?

A. Hard right.

Q. Was that order given immediately after the ship blew the four blasts and the one?

A. No, sir.

Q. How long did they wait?

A. From the time they exchanged the whistles until the command hard right—thirty seconds.

Q. Before you got the order hard right, do you remember the captain directing the course to starboard a little bit?

A. No, sir.

Q. Did you see a buoy ahead of you?

A. No, sir.

Q. You didn't see any flashing red buoy?

A. No, sir.

Q. You said the order of hard right was given about thirty seconds after your ship blew the four blasts and one blast?

[fol. 342] A. Between the exchange of signals, yes.

Q. What do you mean—do you mean that there was an interval of thirty seconds between the exchange of whistles?

A. From the exchange of signals to when the command was given hard right, yes, sir.

Q. How long a time was it from the two-whistle signal that the Eastern Glade blew until your ship answered?

A. Probably as quick as they could—two or three seconds, that is all.

Q. Then how long after the four blasts was your wheel put over?

A. That is hard—I can't say for the time, I don't know how long.

Q. You have a pretty good recollection of what happened that night?

A. Yes, sir.

Q. All right then, when I say "Go" that will represent your ship blowing the four blasts and one whistle; then when you say—I want you to say "Hard right" at the time you got the order after that whistle from your ship. Is that clear?

A. Yes.

Q. All right, now then "Go." Do you understand what you are to do? Has the ord of hard right been given yet?

A. Long ago.

Q. What I want you to do is this: I say "Go," that means your ship has blown her signal, then I want you to think how long it was after that that you got the order hard right, and then say "Hard right."

Mr. Clark: Why don't you blow the whistle and then ask him to say "Hard right."

[fol. 343] Q. All right, you understand that. I will toot four times and then you wait until you think it is hard right, and then you say "Hard right." Now "Toot toot toot toot."

A. "Hard right."

Mr. Farwell: I make it eleven seconds.

Mr. Clark: I have a stop watch, it is between ten and eleven.

Mr. Farwell: It is ten and a half.

Q. You were timed by my watch and Mr. Clark's stop watch—an interval of between ten and eleven seconds. Now, after the Eastern Glade blew two whistles, did you hear any conversation between your captain and anybody else on the bridge?

A. Yes, shortly after—when I heard her blow two whistles, the captain said "Blow four short and one long."

Q. Before that, was there any talk about the other ship?

A. No, sir, I didn't hear nothing.

Q. Did you hear anything else said?

A. No, sir.

Q. The Captain said nothing but "Blow four short and one long"?

A. Yes.

Q. You didn't hear him say anything else?

A. Shortly after four short and one long, shortly afterwards he ordered "Hard right."

Q. Wasn't there any conversation that you heard between the captain and McDonald?

A. No, sir; the only conversation I heard between him and the captain was shortly before the collision the captain said "Stop the ship."

Q. Did the captain or anybody else give you any order to the wheel or the helm after the hard right order?

A. No, sir.

[fol. 344] Q. And the wheel was left hard right from that time up until the time of the collision?

A. Yes.

Q. And was still hard right when you left?

A. When I left the wheel, yes, sir.

Q. How was your ship heading when you left the wheel?

A. When I looked at the compass, I think, if I remember right, it was about east by north.

Q. Was that when you left the wheel?

A. Yes, sir.

Q. You said that the captain gave an order to stop the ship?

A. Yes.

Q. Did you hear any orders to reverse the engines?

A. No, sir.

Q. Was any order given to reverse the engines?

A. I didn't hear any order to reverse the engines.

Q. You would know it if that was done, wouldn't you? Don't look at Mr. Clark, look at me.

Mr. Clark: I wasn't even looking at him.

A. I am looking at your Honor, but I don't remember hearing any, I don't think there was any reverse.

Q. You didn't see the Eastern Glade at the time of the collision?

A. No, sir.

Q. Why was that?

A. Because she was away by me, by the bridge.

Q. Did you feel the bump of the collision?
A. Yes.
[fol. 345] Q. Didn't you look up and see her?
A. I couldn't see her then.
Q. Why not?
A. Because she was abaft the bridge, and aft the pilothouse, the doors were closed.
Q. How about the windows in front of the pilothouse, were they closed?
A. We kept three front windows open.
Q. Did you continue to watch the other ship after the whistles blew?
A. No, sir.
Q. What were you watching?
A. I was watching the ranges and watching the captain.
Q. After you put your wheel hard right, did you look at this ship—the other ship?
A. No, sir, I didn't look at the other ship.
Q. Do you know how the telegraph was on your ship while you were coming up the channel?
A. Yes, full speed.
Q. Did you see that?
A. Yes.
Q. And they kept on at full speed until the captain said "Stop the ship"?
A. Yes.

[fol. 346] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

POSTAL STEAMSHIP CORPORATION, as Owner of Steamship EASTERN GLADE,

v.

Steamship EL ISLEO, SOUTHERN PACIFIC COMPANY, Claimant.

And Cross Suit

Further deposition taken on behalf of the claimant, at the office of Messrs. Burlingham, Veeder, Clark & Hupper, No. 27 William Street, New York City, November 30, 1936.
Present, Mr. Clark, Mr. White and Mr. Farwell.
Same stipulation as heretofore noted.

EDMUND JABLONSKY, being duly sworn and examined as a witness on behalf of the claimant, testified as follows:

Direct examination.

By Mr. Clark:

Q. You were an A. B. on the S.S. El Isleo on December 19, 1935?

A. I was.

Q. Do you remember the collision on that day with the Eastern Glade?

A. Yes, sir.

[fol. 347] Q. When did you go on watch?

A. At the time she left the pier.

Q. Where did you go?

A. On the forecastlehead.

Q. You were lookout?

A. Yes.

Q. What certificate do you hold?

A. A. B. and lifeboat.

Q. How long have you held those certificates?

A. Between thirteen and fourteen years.

Q. You are on one of the Southern Pacific Company ships now?

A. Yes, the Dixie.

Q. You came into port when?

A. Thanksgiving Day.

Q. And when do you sail?

A. Wednesday.

Q. Do you know where you were bound to?

A. We were bound from Sparrows Point to Rukert Terminal.

Q. How was the weather, do you remember?

A. The weather was clear and visibility good.

Q. Do you remember anything about the wind?

A. Well, the wind was very light.

Q. You don't remember the direction it was?

A. I am not quite sure.

Q. When did you first see the Eastern Glade, what lights did you see on her?

A. I noticed the Fort on the starboard side and right after we passed the Fort I noticed the ship and I reported it on the bridge.

Q. What lights did you see?

A. The range lights and the green running lights.

Q. Could you tell us about how she bore in points from you?

A. My idea was she bore from four to six points.

Q. What signals did you hear, what signals did she blow [fol. 348] and what did your ship blow?

A. Right after I reported the vessel she gave two blasts on the whistle; immediately the El Isleo gave four short blasts and one long blast, and the Eastern Glade returned the same signal, four short and one long.

Q. You say that the first signal was two blasts from the Eastern Glade?

A. Yes.

Q. The next signal was from your ship?

A. Four short and one long, followed by four short and one long from the El Isleo.

Q. Was there any interval of time between the whistles?

A. It was as quick as possible.

Q. That is, the exchange between each signal from each vessel was as quick as possible?

A. Yes.

Q. Did you notice any change of course of your vessel?

A. Well, we passed a red flashing buoy after we passed the Fort and she was swinging hard right after she passed that, after she passed that buoy, and she continued.

Q. She passed the red buoy on which side?

A. The starboard side.

Q. And in passing the red buoy she——

A. She swung hard right.

Q. Now, as you were coming up the channel did you notice where you were in the channel, or did you notice which side you were on?

A. On the right-hand side of the channel.

Q. Did you see the range lights? Do you know what I mean by that?

A. Yes.

Q. Were you on the ranges, or either side of them?

A. They are right on both sides of the channel going up.

[fol. 349] Q. Could you see those ranges?

A. Yes.

Q. How were they, in line, or how were they?

A. Yes, sir.

Q. Did you ever see any other lights on the Eastern Glade besides the green lights and her range lights?

Q. Did you see the collision, that is, do know what part of the El Isleo and what part of the Eastern Glade came together?

A. The bow, she hit a glancing blow.

Q. Hit your vessel where?

A. About amidships, around the Plimsoll mark.

Q. Do you know where the El Iselo was at the time of the collision? I mean by that do you know where she was in the channel? Was she in or out of the channel?

A. She was out of the channel.

Q. Which side?

A. Right side.

Q. Are you sure about that?

A. I am positive.

Cross-examination.

By Mr. Farwell:

Q. Who was up in the forecastlehead with you?

A. Myself.

Q. I mean you were alone there?

A. I was alone.

Q. Where was the chief officer, do you know?

A. I do not know.

Q. If it had been necessary to anchor you would have to let the anchor go?

A. Did we——

Q. I say if it had been necessary to anchor could you have let go the anchor?

A. Yes.

Q. What would you have to do to let go the anchor?

A. Release the compressor.

[fol. 350] Q. That is all?

A. That is all.

Q. It does not take long?

A. The devil claws was off already.

Q. It does not take long to do that?

A. No, sir.

Q. You have two anchors?

A. Yes, sir.

Q. Both of them ready for letting go?

A. Yes.

Q. Did you get any order to let go the anchor?

Q. Did you get any order to stand by the anchor?

A. No, sir.

Q. Did you get any orders at all from the bridge?

A. When I reported the ship they returned O K, that they had heard my report of the ship.

Q. Did they say O K?

A. Yes.

Q. Is that the language they used?

A. They said all right, that means the same thing.

Q. You said you saw the lights of the Eastern Glade just after you passed the Fort?

A. Just about after we passed the Fort.

Q. That is Fort Carroll?

A. I am not sure because I am not acquainted down there at all.

Q. That was on your starboard side?

A. Starboard side.

Q. And was that just about as you were passing it or was it quite a while after you passed it?

A. I would say we just passed it.

Q. And you reported it immediately?

A. Immediately.

Q. And then you said that immediately after you reported it——

A. Yes.

Q. —she blew two whistles?

A. Yes.

Q. Well now, would you say that it was just a matter of [fol. 351] seconds after you reported it that it was returned?

A. Oh, well, I couldn't exactly say.

Q. And then immediately after she blew two whistles your ship answered?

A. Yes, he blew four short and one long.

Q. Now then, where was that red buoy that you—that flashing buoy that you mentioned at the time your ship blew the four whistles?

A. Well, that was—she appeared to be swinging, that red buoy, that flashing red buoy was in there on the south side of Fort Carroll where the collision occurred when we were swinging.

Q. Did you pass more than one buoy, more than one flashing red buoy?

A. Well, I couldn't say that, I suppose we have, but I happened to notice that buoy right there when we were started to swing hard right.

Q. Didn't you notice her swinging a little before that?

A. She may have swung a little bit, but not enough to notice it because we were brought close to it when we passed.

Q. You said that when you were coming up there you were on the right-hand side?

A. The right side going up.

Q. Of the channel, do you mean you were on the starboard side?

A. Starboard side.

Q. You were not in the middle of the channel?

A. No, on the starboard side of the channel.

Q. Can you tell how far you were on that side?

A. Well, I imagine we passed that buoy between 50 and 100 feet off.

Q. I mean before that?

A. I couldn't tell because the water is so deceiving, especially when it is dark, you can't tell how much you are off.

[fol. 352] Q. And that buoy was not in sight at the time of the collision?

A. It was astern of us.

Q. Did you see it?

A. I didn't look for it.

Q. You didn't see it?

A. I didn't see it, no, but we passed it, I know that.

Q. Well, at that time you were right up at that red buoy, you were watching this other ship, weren't you?

A. I was watching?

Q. Yes.

A. I didn't need to watch. It is not up to me to watch her, it is up to the bridge. I am only the look out.

Q. You saw the lights just after you passed Fort Carroll?

A. Yes, sir.

Q. Then did you continue to watch this other vessel?

A. No, I continued to look ahead.

Q. You didn't look at her again?

A. No, I didn't look at her.

Q. Do you know what speed your ship was making?

A. No, I couldn't tell you that, I don't know.

Q. Did she appear to slow down any before the collision?

A. Before the collision she slowed down. She stopped.

Q. Engines reversed?

A. Not that I know of, I couldn't tell you that.

Q. When you say she stopped, what do you mean?

A. Well, you—I noticed you could feel the vibration cease.

Q. You didn't hear any—feel any vibration indicating that the engines were going astern?

A. No.

Q. Who was it answered your report of the light?

A. On the bridge?

Q. Yes.

A. I couldn't tell you because I don't know who was up there.

[fol. 353] Q. You didn't recognize the voice?

A. No, sir.

Q. Do you remember any painting being done over the side of your ship after the collision, after you got up to Baltimore the next day?

A. No, because that morning I had taken one of the sailors up to the Italian Consul that morning, so I couldn't tell you that.

Q. You were on board the ship the following morning?

A. No, I had left, I think it was half past 8 or something like that.

Q. Do you know whether any painting was done on the port side while the ship was in Baltimore?

A. I couldn't tell you that, I don't know.

[fol. 354] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

A. 113-396

POSTAL STEAMSHIP CORPORATION, as Owner of Steamship EASTERN GLADE, Libellant,
against
Steamship EL ISLEO, SOUTHERN PACIFIC COMPANY, Claimant

A. 114-162

SOUTHERN PACIFIC COMPANY, as Owner of Steamship EL ISLEO, Libellant,
against
Steamship EASTERN GLADE, POSTAL STEAMSHIP CORPORATION, Claimant

Appearances:

Burlingham, Veeder, Clark & Hupper, Esqs., Proctors for Southern Pacific Company and S.S. El Isleo (Chauncey I. Clark, Burton H. White, of Counsel).

Barry, Wainwright, Thacher & Symmers, Esqs., Proctors for Postal Steamship Corporation and S.S. Eastern Glade (Earle Farwell, of Counsel).

OPINION, MANDELBAUM, D. J.

[fol. 355] MANDELBAUM, District Judge:

The steamships, Eastern Glade and El Isleo, collided near the junction of Curtis Bay and Fort McHenry Channel in the approach to Baltimore Harbor on December 19th, 1935, at about 5:40 P. M.

Cross-libels were filed on behalf of each vessel which in effect charge each other with some faulty act of navigation resulting in the collision.

The Eastern Glade was headed eastward through the Curtis Bay Channel bound for the Standard Oil Fuel Docks at Canton, in Baltimore Harbor. The El Isleo was proceeding in a northerly direction up the Fort McHenry Channel bound for the inner harbor of Baltimore.

From the depositions taken, as well as from the testimony of Captain Korn (master of the El Isleo who was the only witness who testified at the trial), it appears that as the El Isleo was proceeding up Fort McHenry Channel and when about abreast of Fort Carroll, the green (right) side light of the Eastern Glade was sighted about 2 miles away on the port (left) bow. Those on the Eastern Glade observed the El Isleo's red (left) side light.

The El Isleo contends that the respective positions of the vessels created what is termed a "crossing situation" in which El Isleo's course crossed the Eastern Glade course from right to left, and Eastern Glade's course crossed El Isleo's course from left to right.

The Eastern Glade, on the other hand, urges upon the court that the situation created by the relative positions of [fol. 356] the vessels was not a "crossing situation" but rather one of special circumstances, making inapplicable the "Starboard Hand Rule" which governs crossing situations.

In a "crossing situation" the following provisions of the Inland Rules of Navigation apply:

Rule 19: "When two steam vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other" (33 U. S. C. A. Sec. 204).

Rule 22: "Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit avoid crossing ahead of the other" (33 U. S. C. A. Sec. 207).

In a situation involving special circumstances, Rule 27 of the Inland Rules of Navigation applies. This provides as follows:

"In obeying and construing these rules, due regard shall be had to all dangers of navigation and collision and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger" (33 U. S. C. A. Sec. 212).

The Eastern Glade urges that since both vessels were not proceeding in the same channel (Eastern Glade in Curtis Bay Channel and El Isleo in Fort McHenry Channel), "The Starboard Hand Rule" does not apply. (Rules 17 and 22 Inland Rules of Navigation).

Very little discussion is necessary on this point. It is the court's finding that irrespective of whether each vessel [fol. 357] found itself in a different channel while approaching each other, this was a "crossing situation" calling for the application of the "Starboard Hand Rule." So, that, under this rule, the El Isleo was the privileged vessel and the Eastern Glade the burdened one.

With this in mind, let us see what transpired after the vessels sighted each other. It is undisputed that the Eastern Glade sounded a two-blast signal whistle. This indicated an intention to cross the El Isleo's bow. It is important at this point, to quote from some of the testimony of the Eastern Glade's master, taken by deposition, regarding the meaning of the two-blast signal.

"Q. Oh, it wasn't a passing signal?

A. It was two blasts to show the way I was directing my course.

Q. Are you thinking of the International Rules?

A. Yes.

Q. In the Inland Rules, where vessels are on crossing courses and the vessel having the other on her starboard bow sounds two blasts, what does it mean?

A. On her own starboard bow?

Q. Yes.

A. Am I being examined now by the Steamboat inspector?

Mr. Farwell: Answer the question if you can.

A. It means you are going to cross his bow."

(Deposition of A. T. Hudgins, p. 201.)

(Italics by the court.)

[fol. 358] Evidently from the foregoing, it would appear that the Eastern Glade's master was navigating under the International Rules, which apply to ocean and foreign waters, rather than Inland Rules. Under Article 28 of the International Rules, two short blasts mean, "I am directing my course to port." This is not the same as a two-blast signal under the Inland Rules, where such signal means, "I am going to cross your bow."

After the two-blast signal, the El Isleo responded with a danger signal, (four blasts) followed immediately by a one-blast signal. The four blasts indicated that it was dangerous for the Eastern Glade to proceed as intended by her two-blast signal. The one blast signal following immediately indicated that the El Isleo *intended to continue on up the channel.* The master and third mate of the El Isleo say that they heard a reply from the Eastern Glade of four blasts followed by one. The one-blast signal is denied by the Eastern Glade whose witnesses say that in answer to the El Isleo's five blast alarm, the Eastern Glade sounded a signal of three blasts, indicating a "backing" signal.

Another glimpse at a portion of the deposition taken of the master of the Eastern Glade helps the Court in placing the blame, where the Court believes it rightfully belongs. The master testified that he never intended to come out of Curtis Bay at the time El Isleo was passing, and that the whole trouble was due to a miscalculation on his part because of darkness. His testimony, under cross examination, is as follows:

"Q. Well, according to your calculations, El Isleo would have gotten up to 7-M. before you got out of the channel, [fol. 359] and there would be no trouble at all?

A. That is what I expected.

Q. But it turned out that you got up there at about the same time he did?

A. Yes.

Q. So either you must have slowed and stopped your engine or else your speed must have been greater than you thought it was?

A. No.

Q. Then what do you think upset your calculations?
A. Darkness.
Q. *It was just a miscalculation?*
A. *Miscalculation.*
Q. *But you had no intention of doing anything except holding back and letting him go on up the channel and fall in astern of him and you go up?*
A. *Right.*
Q. *At any time did you have any intention of doing otherwise?*
A. *No".*

(Deposition of A. T. Hudgins, pp. 199, 200.)

(Italics by the court.)

Under the rules of the road, the El Isleo had a right to proceed in the manner that she did and it was incumbent upon the Eastern Glade to keep out of the way of the El Isleo. She should have remained in Curtis Bay Channel until El Isleo passed. The reason for her emergence into Fort McHenry Channel is immaterial. Be it due to miscalculation of her master, darkness or bad handling, her failure to remain in Curtis Bay after a five blast signal of the El Isleo, constituted a violation on her part of the Rules of the Road.

The Eastern Glade argues that the master of the El Isleo [fol. 360] was at fault in swinging his vessel to starboard out of the channel, instead of stopping and reversing when collision became imminent. In answer to this, it may be said that there is no rule of law which requires a master to invariably stop and reverse his vessel in the presence of danger. The conduct of the master is governed by the circumstances of each particular case.

The Eastern Glade had violated the rules of the road by immerging into Fort McHenry Channel. So that even conceding that the collision could have been avoided if he (Captain Korn) had reversed the El Isleo, the blame does not shift to him *if he acted prudently.* At bar, the El Isleo was confronted with two alternatives to avoid the collision, namely to stop and reverse or to swing to starboard out of the channel. The latter alternative was chosen. The course taken appears to have been the prudent one when considering the momentum given to her by her speed and cargo. Her master had reason to believe that by increasing

her speed while swinging to starboard, he would get away from the Eastern Glade and reduce the risk of collision. When the master realized that he could not avoid what eventually happened, he stopped the engines.

The court finds that the course pursued by Captain Korn was neither prompted by a stubborn adherence to a general rule, nor pride in not giving up his right of way, so to speak, even if he had to crash to assert it. The course pursued by him is better described as being prompted by the exigencies of the occasion (See the *Mary T. Tracy*, 298 [fol. 361] Fed. 528, 530; Reversed on other grounds, 8 F. (2nd) 591, 593).

Finally, the Eastern Glade resorts to Revised Statutes 4401. (U. S. C. A., Sec. 364) to impose liability on the El Isleo. That section provides:

"* * * every coastwise seagoing steam vessel subject to the navigation laws of the United States, and to the rules and regulations aforesaid, not sailing under register shall, while under way, except on the high seas be under the control and directions of pilots licensed by the inspectors of steamboats."

It appears that Captain Korn, master of the El Isleo had no pilot's license for Baltimore Harbor. It is therefore the contention that the El Isleo is presumptively at fault because at the time of collision, she was in actual violation of a statute to avoid collisions.

Was it Captain Korn's ignorance of Baltimore Harbor that contributed to the collision? The answer, I believe, should be in the negative. Captain Korn testified to holding a master's license for thirty years and being at sea for about 48 years. Assuming, without deciding that his failure to hold a pilot's license for Baltimore Harbor constituted presumptive fault on the part of the El Isleo, the court still thinks that the situation at bar comes within the exception to the rule (if that be the rule). The very cases cited by the Eastern Glade in support of this proposition say that it becomes incumbent upon the offending vessel in order to overcome the presumption of fault that the absence of a licensed master not only did not enter into the [fol. 362] occurrence, *but that it could not have done so.*

The court finds that Captain Korn violated no rule of navigation and conducted himself under the circumstances as an experienced seaman should. In this connection, the

court cannot help but compare the conceded miscalculations of Captain Hudgins of the Eastern Glade, as well as his apparent confusion with respect to the meaning of a two-signal blast (International Rules and Inland Rules). Captain Korn's lack of a pilot's license had nothing whatsoever to do with the occurrence. The fault lies with the Eastern Glade in not having heeded the El Isleo's five blast signal and remained in Curtis Bay Channel so as to permit the privileged vessel to pass.

The failure of the court to discuss various other propositions offered by both sides in support of their respective positions is not because they are deemed unimportant or irrelevant to the issues. To discuss them at length would unnecessarily prolong the opinion and serve no useful purpose. All the facts and circumstances in the case, together with what has been discussed above, leads the court to place the blame for the collision on the Eastern Glade and to exonerate the El Isleo from any fault.

In accordance with these views, the court directs a decree dismissing the libel of Postal Steamship Corporation v. The El Isleo and allowing a decree to enter against Postal Steamship Corporation in favor of Southern Pacific Company for damages sustained by the El Isleo.

Dated, August 30, 1937.

[fol. 363] IN UNITED STATES DISTRICT COURT

A. 113-396

POSTAL STEAMSHIP CORPORATION, owner of Steamship EASTERN GLADE, Libellant,

against

Steamship EL ISLEO, her engines, boilers, etc., SOUTHERN PACIFIC COMPANY, Claimant

FINAL DECREE—Oct. 15, 1937

This cause having duly come on to be heard on the 23rd day of June, 1937, upon the pleadings and proofs adduced by the respective parties, and having been argued and submitted by the advocates for the respective parties; and the Court after due deliberation having rendered and filed

its opinion on the 30th day of August, 1937, finding the fact and its conclusions of law and directing that the libel [fol. 364] herein be dismissed and the costs of the claimant having been duly taxed by the Clerk of this Court at the sum of $316.57;

Now, on motion of Burlingham, Veeder, Clark & Hupper, proctors for claimant, it is

Ordered, Adjudged and Decreed, that the libel herein be and the same hereby is dismissed with costs and that claimant, Southern Pacific Company, recover of and from libellant, Postal Steamship Corporation, the sum of $316.57, its costs as taxed, with interest thereon until paid, and that claimant have judgment and execution therefor; and it is further

Ordered, that unless this decree is satisfied or an appeal is taken within ten (10) days after service of a copy of this decree with notice of entry upon the proctors for libellant, the stipulators for costs on the part of libellant cause the engagement of their stipulation to be performed or execution may issue against their goods and chattels, lands and tenements, or other real estate to satisfy this final decree.

Samuel Mandelbaum, U. S. D. J.

[fol. 365] In United States District Court, Southern District of New York

Postal Steamship Corporation, owner of Steamship Eastern Glade, Libellant,

against

Steamship El Isleo, her engines, boilers, etc., Southern Pacific Company, Claimant

Notice of Appeal

Sirs:

Please Take Notice, that the Postal Steamship Corporation, the libellant herein, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the final decree entered herein in the office of the Clerk of this Court on the 15th day of October, 1937, and

from each and every part of said decree, as well as from the whole thereof.

Dated, New York, N. Y., October 27, 1937.

Yours, etc., Barry, Wainwright, Thacher & Symmers, Proctors for Postal Steamship Corporation, Libellant Appellant, 72 Wall Street, New York City.

[fol. 366] To: Charles Weiser, Esq., Clerk.

Messrs. Burlingham, Veeder, Clark & Hupper, Proctors for Claimant, 27 William Street, New York City.

ALLOWANCE OF APPEAL

The foregoing appeal is hereby allowed this 27th day of October, 1937.

J. W. Clancy, U. S. D. J.

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

A. 113-396

POSTAL STEAMSHIP CORPORATION, Owner of the Steamship EASTERN GLADE, Libellant,

against

Steamship EL ISLEO, her engines, boilers, etc., SOUTHERN PACIFIC COMPANY, Claimant

ASSIGNMENT OF ERRORS

Postal Steamship Corporation, libellant herein, hereby assigns error in the opinion, findings and final decree of the [fol. 367] District Court of the United States for the Southern District of New York heretofore entered herein, as follows:

First. In that the court erred in holding that the situation of the two vessels was a crossing one under the navigation rules and called for the application of the "starboard hand rule."

Second. In that the court failed to hold that the vessels were governed by the special circumstance rule.

Third. In that the court held that "El Isleo" was the privileged vessel and the "Eastern Glade" the burdened one.

Fourth. In that the court held that "El Isleo" had the right to proceed after the exchange of whistles.

Fifth. In that the court failed to hold that the situation was one requiring both vessels to act to avoid collision upon the sounding of alarm whistles.

Sixth. In that the court held that the two blast signal sounded by the "Eastern Glade" indicated an intention to cross the bow of "El Isleo," and failed to hold that such signal indicated an intention on the part of the "Eastern Glade" to direct her course to her own port.

Seventh. In that the court failed to hold "El Isleo" at fault because she did not at any time reverse her engines.

[fol. 368] Eighth. In that the court failed to hold "El Isleo" at fault for continuing on at full speed until the moment of collision.

Ninth. In that the court failed to hold "El Isleo" at fault because she did not stop and reverse her engines when danger of collision was apparent.

Tenth. In that the court held that "El Isleo" acted prudently in changing her course without stopping or reversing her engines.

Eleventh. In that the court erroneously found, contrary to the evidence, that "El Isleo" increased her speed in an effort to avoid collision.

Twelfth. In that the court failed to hold "El Isleo" at fault for failing to stop and reverse her engines upon hearing the backing signal or alarm signal from the "Eastern Glade."

Thirteenth. In that the court erroneously found that the "Eastern Glade" failed to heed "El Isleo's" alarm signal.

Fourteenth. In that the court failed to hold that "El Isleo" was at fault because she was not under the control and direction of a licensed pilot as required by the statutes.

Fifteenth. In that the court failed to find that "El Isleo" at the time of collision was proceeding on the wrong side of the channel.

[fol. 369] Sixteenth. In that the court held the "Eastern Glade" solely at fault for the collision.

Seventeenth. In that the court failed to hold "El Isleo" solely at fault for the collision.

Eighteenth. In that the court dismissed the libel of the Postal Steamship Corporation.

Nineteenth. In that the court did not direct the entry of a decree in favor of the Postal Steamship Corporation for the amount of its damages and costs.

Barry, Wainwright, Thacher & Symmers, Proctors for Libellant, 72 Wall Street, New York City.

[fol. 370] In United States District Court

A. 114-162

Southern Pacific Company, as owner of Steamship El Isleo, Libellant,

against

Steamship Eastern Glade, her engines, boilers, etc., Postal Steamship Corporation, Claimant

Interlocutory Decree—Oct. 15, 1937

This cause having duly come on to be heard on the 23rd day of June, 1937, upon the pleadings and proofs of the respective parties and having been argued and submitted by the advocates for the respective parties; and the Court, after due deliberation, having rendered and filed its opinion on the 30th day of August, 1937, finding the facts and its conclusions of law and directing that a decree be entered [fol. 371] herein in favor of libellant for the damages sustained by S. S. El Isleo;

Now, on motion of Burlingham, Veeder, Clark & Hupper, proctors for libellant, it is

Ordered, Adjudged and Decreed that libellant, Southern Pacific Company, recover of and from Postal Steamship Corporation, claimant of S. S. Eastern Glade, and or its stipulators for costs and for value, the damages sustained by it by reason of the matters and things set forth in the libel herein, with interest thereon and with costs to be taxed; and it is further

Ordered, that this matter be referred to Rudolf Stand, Esq., of 160 Broadway, New York City, as Special Commissioner, to ascertain and compute the amount of libellant's said damages and to report thereon to this Court with all convenient speed.

Samuel Mandelbaum, U. S. D. J.

[fol. 372] In United States District Court, Southern District of New York

Southern Pacific Company, as owner of Steamship El Isleo, Libellant,

against

Steamship Eastern Glade, her engines, boilers, etc., Postal Steamship Corporation, Claimant

Notice of Appeal

Sirs:

Please Take Notice that the Postal Steamship Corporation, the claimant herein, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the interlocutory decree entered herein in the office of the Clerk of this Court on the 15th day of October, 1937, and from each and every part of said decree, as well as from the whole thereof.

Dated: New York, N. Y., October 27, 1937.

Yours, etc., Barry, Wainwright, Thacher & Symmers, Proctors for Postal Steamship Corporation, Claimant-Appellant, 72 Wall Street, New York City.

[fol. 373] To: Charles Weiser, Esq., Clerk.

Messrs. Burlingham, Veeder, Clark & Hupper, Proctors for Libellant, 27 William Street, New York City

ALLOWANCE OF APPEAL

The foregoing appeal is hereby allowed this 27th day of October, 1937.

J. W. Clancy, U. S. D. J.

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

A. 114-162

SOUTHERN PACIFIC COMPANY, as owner of Steamship "EL ISLEO," Libellant,

against

Steamship "EASTERN GLADE," her engines, boilers, etc., POSTAL STEAMSHIP CORPORATION, Claimant

ASSIGNMENT OF ERRORS

Postal Steamship Corporation, claimant herein, hereby assigns error in the opinion, findings and interlocutory [fol. 374] decree of the United States District Court for the Southern District of New York heretofore entered herein, as follows:

First. In that the court erred in holding that the situation of the two vessels was a crossing one under the navigation rules and called for the application of the "starboard hand rule."

Second. In that the court failed to hold that the vessels were governed by the special circumstance rule.

Third. In that the court held that "El Isleo" was the privileged vessel and the "Eastern Glade" the burdened one.

Fourth. In that the court held that "El Isleo" had the right to proceed after the exchange of whistles.

Fifth. In that the court failed to hold that the situation was one requiring both vessels to act to avoid collision upon the sounding of alarm whistles.

Sixth. In that the court held that the two blast signal sounded by the "Eastern Glade" indicated an intention to

cross the bow of "El Isleo," and failed to hold that such signal indicated an intention on the part of the "Eastern Glade" to direct her course to her own port.

Seventh. In that the court failed to hold "El Isleo" at fault because she did not at any time reverse her engines.

[fol. 375] Eighth. In that the court failed to hold "El Isleo" at fault for continuing on at full speed until the moment of collision.

Ninth. In that the court failed to hold "El Isleo" at fault because she did not stop and reverse her engines when danger of collision was apparent.

Tenth. In that the court held that "El Isleo" acted prudently in changing her course without stopping or reversing her engines.

Eleventh. In that the court erroneously found, contrary to the evidence, that "El Isleo" increased her speed in an effort to avoid collision.

Twelfth. In that the court failed to hold "El Isleo" at fault for failing to stop and reverse her engines upon hearing the backing signal or alarm signal from the "Eastern Glade."

Thirteenth. In that the court erroneously found that the "Eastern Glade" failed to heed "El Isleo's" alarm signal.

Fourteenth. In that the court failed to hold that "El Isleo" was at fault because she was not under the control and direction of a licensed pilot as required by the statutes.

Fifteenth. In that the court failed to find that "El Isleo" at the time of collision was proceeding on the wrong side of the channel.

[fol. 376] Sixteenth. In that the court held the "Eastern Glade" solely at fault for the collision.

Seventeenth. In that the court failed to hold "El Isleo" solely at fault for the collision.

Eighteenth. In that the court directed the entry of a decree in favor of the Southern Pacific Company against the "Eastern Glade."

Nineteenth. In that the court failed to dismiss the libel of the Southern Pacific Company with costs.

Barry, Wainwright, Thacher & Symmers, Proctors for Libellant, 72 Wall Street, New York City.

[fol. 377] In United States Circuit Court of Appeals for the Second Circuit

Consolidated Causes A.113-396 and A.114-162

[Title Omitted.]

Stipulation and Order as to Certain Exhibits

It is Hereby Stipulated and Agreed that, in lieu of printing the following exhibits in full in the transcript of record, appellant will furnish three copies of each for the use of the Court and one copy for the use of counsel for appellee upon the argument of the appeal herein:

Exhibits of Libellant, Postal Steamship Corporation

Exhibit 1. December 3rd, 1936—Chart of Baltimore harbor marked by Captain Korn.

[fol. 378] Deposition Exhibits

Exhibit 1. Ghikas deposition—"Eastern Glade" engine room bell book (pages covering December 19 and 20, 1935, only).

Exhibit 2. Ghikas deposition—"Eastern Glade" engine room smooth log book from August 23, 1935, to December 19, 1935 (page covering December 19, 1935, only).

Exhibit 3. Ghikas deposition—"Eastern Glade" engine room smooth log book from December 15, 1935, to and including January 10, 1936 (pages covering December 19 and 20, 1935, only).

Exhibit 4. Ghikas deposition—"Eastern Glade" engine room rough log book from August 23, 1935, to December 12, 1935 (page covering December 19, 1935, only).

Exhibit 5. Ghikas deposition—"Eastern Glade" engine room rough log book from December 15, 1935 to January 10, 1936 (pages covering December 19 and 20, 1935, only).

Exhibit 6. Hudgins deposition—"Eastern Glade" bridge bell book (pages covering December 19 and 20, 1935, only).

Exhibit 7. Hudgins deposition—"Eastern Glade" rough deck log (pages covering December 19 and 20, 1935, only).

Exhibit 8. Hudgins deposition—"Eastern Glade" smooth deck log (page covering December 19, 1935, only).

[fol. 379] Exhibit 9. Hudgins deposition—Chart of Baltimore harbor.

Exhibit 11. Stewart deposition—diagram of damage to bow of "Eastern Glade."

Exhibit 12. Stewart deposition—report of survey.

Exhibit 13. Stewart deposition—report of survey.

Exhibits of Respondent

Exhibit A. December 3rd, 1936—page 94 of S.S. "El Isleo" engine room bell book containing entries for December 19, 1935, made by Prendergast, oiler on S.S. "El Isleo."

Deposition Exhibits

McDonald, "El Isleo"—Exhibit A—McDonald deposition. Chart of Baltimore Harbor.

"El Isleo" Exhibit B—McDonald deposition—deck log S.S. "El Isleo" (page covering December 19, 1935, only).

"El Isleo" Exhibit C—Eberly deposition—engine room log (page covering December 19, 1935, only).

Exhibit 1. Johanson deposition, cross examination—chart of Baltimore harbor.

It is Further Stipulated and Agreed that the complete originals of the exhibits herein mentioned and also "Eastern Glade" Exhibit 12 (Pilot Rules and Local Inspectors' Regulations) may be referred to, produced and handed up to [fol. 380] the Court upon the argument of the appeal herein by either party with the same force and effect as though printed in the transcript of record.

Dated, New York, N. Y., March 15, 1938.

Barry, Wainwright, Thacher & Symmers, Proctors for Appellant. Burlingham, Veeder, Clark & Hupper, Proctors for Appellee.

So Ordered: May 6th, 1938.

Martin T. Manton, United States Circuit Judge.

[fol. 381] In United States District Court, Southern District of New York

[Title Omitted.]

Stipulation as to Record

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, May , 1938.

Barry, Wainwright, Thacher & Symmers, Proctors for Appellant. Burlingham, Veeder, Clark & Hupper, Proctors for Appellee.

[fol. 382] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 383] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1938

Nos. 27, 28

Argued Nov. 15, 1938. Decided Jan. 9, 1939

POSTAL STEAMSHIP CORPORATION, as Owner of the Steamship the "EASTERN GLADE", Libelant-Appellant,

v.

Steamship the "EL ISLEO", SOUTHERN PACIFIC CO., Claimant-Appellee

SOUTHERN PACIFIC COMPANY, as Owner of the Steamship the "EL ISLEO", Libelant-Appellee,

v.

Steamship the "EASTERN GLADE", POSTAL STEAMSHIP CORPORATION, Claimant-Appellant

Appeal from the District Court of the United States for the Southern District of New York

Before L. Hand, Swan, and Chase, Circuit Judges

Postal Steamship Corporation has appealed from a final decree dismissing its label against the Steamship El Isleo, and from an interlocutory decree sustaining a libel brought by Southern Pacific Company against the appellant's steamship Eastern Glade, which was held solely at fault for a collision between the two vessels. Decrees affirmed.

For opinion below see 20 F. Supp. 373.

Barry, Wainwright, Thacher & Symmers, of New York City (Earle Farwell and John C. Crawley, both of New York City, of counsel), for appellant.

Burlingham, Veeder, Clark & Hupper, of New York City (Chauncey I. Clark and Burton H. White, both of New York City, of counsel), for appellee.

SWAN, Circuit Judge:

On December 19, 1935, about 5:40 P. M., a collision occurred between the Eastern Glade, owned by Postal Steamship

Corporation, and the El Isleo, owned by Southern Pacific Company. Each owner filed a libel against the vessel of the other. The libels were tried together and resulted in a finding that the Eastern Glade was solely at fault. A final decree of dismissal was entered in the suit brought by Postal Steamship Corporation, and an interlocutory decree for damages was awarded Southern Pacific Company in its suit. From both decrees Postal Steamship Corporation has appealed.

The collision occurred in the waters of Baltimore Harbor near the junction of Curtis Bay Channel with Fort McHenry Channel. The latter is about 600 feet wide and runs in a northwesterly direction toward Baltimore; the former running nearly east and west, comes into Fort McHenry Channel from the west but does not cross it. The night was clear, the tide ebb, and a 15 mile breeze was blowing from the northwest. The steamship Eastern Glade, light, was bound out of Curtis Bay Channel and was intending to turn left into Fort McHenry Channel and proceed to Baltimore. The [fol. 384] steamer El Isleo, laden with 1,000 tons of steel ore, also bound for Baltimore, was proceeding up Fort McHenry Channel at full speed—about eight miles through the water, as she was working only one boiler. When the vessels sighted each other they were more than a mile apart, the El Isleo being about four points on the starboard bow of the Eastern Glade. The latter stopped her engines and shortly thereafter sounded a two blast signal to indicate, as her master says, that his course was to the left and up Fort McHenry Channel. El Isleo answered the two blast signal with an alarm followed by one blast, to indicate that she would keep her course and speed. Captain Korn of El Isleo testified that the Eastern Glade responded with four blasts followed by one, while her captain says she responded with three blasts to indicate that she was reversing her engines. El Isleo kept on until she reached a buoy just opposite Curtis Bay Channel, when, believing collision imminent, she put her rudder hard right and swung out of Fort McHenry Channel to her starboard. The Eastern Glade, although her master testified that he intended to hold back in Curtis Bay Channel until El Isleo had passed the junction, came clear across Fort McHenry Channel and brought her stem into contact with the port side of El Isleo about amidships. The place of collision was east of Fort McHenry Channel. The

district court did not determine how far to the east, but McDonald testified it was about 200 yards.

The appellant no longer seeks exoneration of the Eastern Glade; it admits her fault in failing to remain in Curtis Bay Channel, as her master intended to do, until El Isleo had passed. But it contends that El Isleo was also blameworthy because she kept on at undiminished speed after sounding the danger signal, and because she had no local pilot in charge of her navigation.

Most of the argument has revolved about the question whether the vessels were on crossing courses, as the district court held, or whether the situation was one of special circumstances, as the appellant contends. As this court has often said, a vessel's course for the purpose of determining her navigational duties with respect to another vessel is her apparent course, not her heading at a particular moment. The Hallgrim, 2 Cir., 20 F. 2d 720, 721; Commonwealth & Dominion Line v. United States, 2 Cir., 20 F. 2d 729, 731, modified on other grounds in 278 U. S. 427, 49 S. Ct. 183, 73 L. Ed. 439. It is not disputed that El Isleo's course up Fort McHenry Channel was always apparent to the Eastern Glade. But the latter's course was not immediately apparent to El Isleo; when the Eastern Glade should reach the end of Curtis Bay Channel, she might turn left, she might turn right, or she might conceivably, though improbably, cross Fort McHenry Channel, since there was water enough to the east of that channel, although neither pier, port nor anchorage to which she might be bound appears on the chart. When, however, she sounded her two blast signal, she indicated an intention either to cross the bows of El Isleo by proceeding across Fort McHenry Channel, or to turn to the left and proceed up that channel. The former alternative would clearly result in crossing courses; the latter would result in converging courses, since the Eastern Glade's course, if projected, would carry her into the starboard lane of Fort McHenry Channel, unless she violated her duty by going up on the wrong side. Such converging courses involve the very risk that resulted in the collision, and the rights and duties of the vessels are governed by Articles 19, 22 and 23 of the Inland Rules, 33 U. S. C. A. §§ 204, 207, 208. The Albano, [1907] A. C. 193, 205; see, also, the Boston Socony, 2 Cir., 63 F. 2d 246. The cases relied upon by the appellant are not to the contrary, for they dealt with a situation where the vessel corresponding to the Eastern Glade made a turn

to the right, resulting in "meeting" courses. The Arrow, 2 Cir., 214 F. 743; The R. J. Moran, 2 Cir., 299 F. 500. Accordingly, the district court was right in treating the situation as one of crossing courses.

So viewed no fault appears in the navigation of El Isleo, the privileged vessel. To the two blast signal of the Eastern Glade Captain Korn responded with an alarm followed by one blast to indicate his refusal to yield his right of way. In The Fulton, 2 Cir., 54 F. 2d 467, we discussed the rule established in this circuit that in a crossing situation the privileged vessel may "cross" the signal of the burdened vessel and hold her course and speed until it becomes evident that the burdened vessel either cannot or will not keep out of the way. Although the rule was criticized, we thought [fol. 385] it too firmly established to be departed from until the Supreme Court speaks. We still adhere to that view. The district court found that El Isleo was justified in holding her course and speed until she reached buoy 8 M, when she put her rudder hard right and ran to starboard out of the channel. The evidence amply supports this finding. Nor can her captain be charged with fault because in extremis he chose that chance of avoiding the collision instead of the chance of reversing his engines. The Nordpol, 2 Cir., 84 F. 2d 3. We agree also with the finding that the proof of El Isleo's navigation overcame any presumption of fault arising from the fact that her captain had no pilot's license for the local waters. The fault of the Eastern Glade was glaring and was alone sufficient to account for the disaster; hence any slight doubt as to the propriety of El Isleo's navigation should be resolved in her favor. The City of New York, 147 U. S. 72, 85, 13 S. Ct. 211, 37 L. Ed. 84.

Decrees affirmed.

[fol. 386] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 8th day of March, one thousand nine hundred and thirty-nine.

Present: Hon. Learned Hand, Hon. Thomas W. Swan, Hon. Harrie B. Chase, Circuit Judges.

POSTAL STEAMSHIP COMPANY, Libellant-Appellant,

vs.

S. S. EL ISLEO, SOUTHERN PACIFIC COMPANY, Claimant-Appellee

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 387] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Postal Steamship Company vs. S. S. El Isleo. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 8, 1939. William Parkin, Clerk.

[fol. 388] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 8th day of March, one thousand nine hundred and thirty-nine.

Present: Hon. Learned Hand, Hon. Thomas W. Swan, Hon. Harrie B. Chase, Circuit Judges.

SOUTHERN PACIFIC COMPANY, Libellant-Appellee,

vs.

S. S. EASTER GLADE, POSTAL STEAMSHIP CORPORATION, Claimant-Appellant

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 389] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Southern Pacific Company vs. S. S. Eastern Glade. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 8, 1939. William Parkin, Clerk.

[fol. 390] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 389, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Postal Steamship Company, Libellant-Appellant, vs. S. S. El Isleo, Southern Pacific Company, Claimant-Appellee. Southern Pacific Company, Libellant-Appellee, vs. S. S. Eastern Glade, Postal Steamship Company, Claimant-Appellant, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this fifteenth day of March, in the year of our Lord one thousand nine hundred and thirty-nine, and of the Independence of the said United States the one hundred and sixty-third.

Wm. Parkin, Clerk. Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 391] SUPREME COURT OF THE UNITED STATES

No. 73, October Term, 1939

ORDER ALLOWING CERTIORARI—Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

[fol. 392] SUPREME COURT OF THE UNITED STATES

No. 74, October Term, 1939

ORDER ALLOWING CERTIORARI—Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

[Endorsed on cover:] File Nos. 43,479, 43,480. U. S. Circuit Court of Appeals, Second Circuit. Term No. 73. Postal Steamship Corporation, Petitioner, vs. Steamship El Isleo, etc.; Southern Pacific Company, Claimant. Term No. 74. Postal Steamship Corporation, Petitioner, vs. Southern Pacific Company. Petition for writs of certiorari and exhibit thereto. Filed May 27, 1939. Term Nos. 73 O. T. 1939, 74 O. T. 1939.

FILE COPY

MAY 27 1939
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM—1938.

Nos. ~~994-995~~ 73-74

POSTAL STEAMSHIP CORPORATION,
Petitioner,

against

STEAMSHIP EL ISLEO, etc.;
SOUTHERN PACIFIC COMPANY, Claimant,
Respondent.

POSTAL STEAMSHIP CORPORATION,
Petitioner,

against

SOUTHERN PACIFIC COMPANY,
Respondent.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

JOHN C. CRAWLEY
EARLE FARWELL
for the Petitioner.

BARRY, WAINWRIGHT, THACHER & SYMMERS,
72 Wall Street, New York City.

Post Printing Company, Inc., 80 Lafayette Street, New York, N. Y.

INDEX

	PAGE
Jurisdictional Facts	1
Summary	2
Question presented	3
Statement	3
Reasons for Allowance of writ	8
Conclusion	9

CITATIONS

Belden v. *Chase*, 150 U. S. 674, 698	8
Eastern Glade and *El Isleo* (opinion below), 101 F. (2d) 4	1
Fulton, The, 54 F. (2d) 467, 468	4, 5, 7
STATUTES:	
28 U. S. Code § 347	1
33 U. S. Code § 113	7
33 U. S. Code §§ 157, 158	3, 8, 9
33 U. S. Code § 203	7
33 U. S. Code §§ 206, 212	2, 3, 8
46 U. S. Code § 239	8
MISCELLANEOUS:	
Supervising Inspectors' Rules (Pilot Rules for certain Inland Waters of the Atlantic and Pacific Coasts and off the Coast of the Gulf of Mexico)	3, 7, 8, 11
Holmes, *J.*, 10 Harv. L. R. at p. 469	9
APPENDIX:	
33 U. S. Code § 157	10
33 U. S. Code § 206	10
33 U. S. Code § 212	10
Supervising Inspectors' Rules II, III and VII	11

Supreme Court of the United States

OCTOBER TERM, 1938.

POSTAL STEAMSHIP CORPORATION, Petitioner, AGAINST STEAMSHIP EL ISLEO, etc.; SOUTHERN PACIFIC COMPANY, Claimant, Respondent.	No.
POSTAL STEAMSHIP CORPORATION, Petitioner, AGAINST SOUTHERN PACIFIC COMPANY, Respondent.	No.

PETITION.

MAY IT PLEASE THE COURT:

Your petitioner prays for writs of certiorari to review a decision of the Circuit Court of Appeals for the Second Circuit, in admiralty, affirming two decrees of the District Court for the Southern District of New York, one a final decree dismissing the petitioner's libel against the respondent's steamship El Isleo and the other an interlocutory decree in favor of the respondent upon its cross-libel against the petitioner's steamship Eastern Glade.

The opinion of the Circuit Court of Appeals, dated January 9, 1939, is reported in 101 F. (2d) 4 [R. 383], and that of the District Court in 20 F. Supp. 373. The orders for mandate were entered in the office of the Clerk of the Circuit Court of Appeals on March 8, 1939 [R. 386-8]. Jurisdiction is based on §240(a) of the Judicial Code, as amended; 28 U. S. Code §347.

Summary.

There was a collision between the petitioner's steamship Eastern Glade and the respondent's steamship El Isleo, for which the petitioner's vessel has been held solely at fault.

An essential basis of the Circuit Court of Appeals' decision is a line of its own former decisions with which the present members of that court do not agree, and which they have critically examined and demonstrated to be wrong, but to the authority of which they have here deferred, intimating that they purpose so deferring "until the Supreme Court speaks" [R. 385].

The matter involves the construction of a statute of the United States (33 U. S. Code §§206, 212; 30 Stat. 101) in relation to Rules II and VII of the Supervising Inspectors.*

Where, in the inland waters of the United States, two steamships are on crossing courses, and the one required to give way proposes an unacceptable departure from the statutory starboard-hand rule, what should the other vessel do?

Should she maintain her course and speed until it becomes evident to her master that the first vessel alone cannot or will not avoid collision? (So the court held here, correctly if the Supervising Inspectors' Rules are a nullity in such cases.) Or should she conform to the objective standard set up by the Supervising Inspectors, defining the situation as one of immediate danger, and obey their injunction to stop and back if necessary until an understanding has been reached? (So the Circuit Court of Appeals would hold now "if the question were *res integra*": page 6, *infra*.)

That point, clearly recognized and decided below adversely to the petitioner (R. 385), is submitted to warrant and in justice require the decision of this honorable court.

---

* Pertinent provisions of the statute and the rules are printed in the appendix, and copies of the government pamphlet containing the full text of the statutory regulations and the Supervising Inspectors' Rules are submitted herewith.

The Question Presented.

Are Rules II and VII of the Supervising Inspectors (Pilot Rules for Certain Inland Waters of the Atlantic and Pacific Coasts and of the Coast of the Gulf of Mexico), promulgated pursuant to the authority of Congress (33 U. S. Code § 157), actually in conflict with Article 21 of the Inland Rules (33 U. S. Code § 206 and § 212), as the courts of the second circuit formerly held; or are those Rules consistent with the statute, as the Supervising Inspectors have persistently maintained and as the Circuit Court of Appeals has said that it would now hold except for its own contrary decisions?

Statement.

Proceeding down Curtis Bay Channel, Baltimore Harbor, in a clear evening (December 19, 1935), the petitioner's vessel sighted, four points on her starboard bow, the respondent's vessel El Isleo. The latter, about a mile away, was proceeding up Fort McHenry Channel, which the first Channel meets approximately at right angles. The petitioner's vessel, intending to turn left at the junction and proceed up Fort McHenry Channel, stopped her engines and shortly thereafter blew two blasts. El Isleo answered with an alarm signal, followed by a cross-signal of one blast, indicating that she would hold her course and speed. The petitioner's vessel again sounded signals (her master says three blasts, El Isleo says four and one), and reversed her engines; but El Isleo kept on at full speed until she reached the buoy just opposite Curtis Bay Channel, when, believing collision imminent, she put her rudder hard right and swung out of Fort McHenry Channel to her starboard. The petitioner's vessel went across Fort McHenry Channel, and brought her stem into contact with El Isleo's port side about amidships.

It was conceded on the argument of the appeal that the Eastern Glade was at fault (R. 385), but it was contended that El Isleo likewise was at fault (R. 373).

All of the facts involved in that contention have been resolved by the Circuit Court of Appeals in such a way as to bring into focus only the question that is here presented.

Having found that the two vessels, although in separate channels, were technically on crossing courses, the Circuit Court of Appeals held that El Isleo had the right to sound a one-blast signal in answer to the Eastern Glade's signal of two blasts, and had the right to maintain her course and speed until it became evident to her master that the Eastern Glade alone could not or would not avoid collision.

Such is the law, beyond dispute, provided Rules II* and VII* of the Supervising Inspectors are *invalid*. If, on the other hand, those Rules are *valid*, as the Circuit Court of Appeals has said that it should now decide if the subject were *res integra*, El Isleo was manifestly at fault with the Eastern Glade.

Rule II* of the Supervising Inspectors forbids the sounding of cross-signals; and El Isleo violated that Rule in answering two blasts with one. In addition, Rule VII* required her, in rejecting the Eastern Glade's two-blast proposal, to sound alarm signals and stop, and to reverse if necessary, instead of continuing at full speed until collision was inevitable. There is no doubt that such is the meaning and intended effect of those two Rules, which were discussed by the Circuit Court of Appeals in the case of *The Fulton*, 54 F. (2d) 467, quoted below.

There is no doubt either that the Circuit Court of Appeals' decision here as to the sole fault of the Eastern Glade was premised on the invalidity of those two Rules. It is manifest that a different result would obtain if those Rules were to be given effect.

The point on which the petitioner seeks review was disposed of by the Circuit Court of Appeals (Judge Swan

---

* Pages 11 and 12, *infra*.

writing with the concurrence of Judges Learned Hand and Chase) as follows:

> "To the two blast signal of the Eastern Glade Captain Korn responded with an alarm followed by one blast to indicate his refusal to yield his right of way. In *The Fulton*, 54 F. (2d) 467 we discussed the rule established in this circuit that in a crossing situation the privileged vessel may 'cross' the signal of the burdened vessel and hold her course and speed until it becomes evident that the burdened vessel either cannot or will not keep out of the way. *Although the rule was criticized, we thought it too firmly established to be departed from until the Supreme Court speaks. We still adhere to that view.*" [R. 384-5; our italics.]

Judge Learned Hand, who wrote the opinion in *The Fulton* case, there said:

> "The Inspectors' Rules have always forbidden cross signals in passing situations, and in all others too since 1909. *They have coupled the injunction with another which required the answering vessel, if the first signal was inappropriate, to sound an alarm and check her speed, now apparently confined to crossing situations* (Rule VII). In a number of decisions involving crossing situations we have exonerated a vessel which pressed her statutory privilege by crossing the signal and holding her course and speed. *The John King* (C.C.A.) 49 F. 469; *The Cygnus* (C.C.A.) 142 F. 85; *The Transfer No. 15* (C.C.A.) 145 F. 503; *The John H. Starin* (C.C.A.) 162 F. 146; *The Montauk* (C.C.A.) 180 F. 697; *The Ashley* (C.C.A.) 221 F. 423.
>
> "Our reasoning has been, that, as the statute (Inland Rules) article 21 (33 USCA §206), puts a duty upon the privileged ship to keep her course and speed, no rule can be valid which affects to relieve her of it, and that she may announce her determination to insist by crossing the first signal. The doctrine has been too long and too repeatedly established to allow any question now, *but it is plain that the inspectors have never assented to it.* We have at times said that the rule promoted collisions,

which were to be avoided only by rigid adherence to the statutory rules. The supposed certainty is, however, somewhat illusory, for concededly there comes a time when the privileged vessel must yield; there is never a 'right of way into collision.' At best the point where she must do so, is one of degree, and, *were the question res integra, we should hold the rule valid.* The inspectors apparently believe that in the greater number of cases it will conduce to collision to allow a pilot to keep on in the face of a proposal by the approaching vessel that she put herself across his bows. True, the proposer often will not act without consent; but it is certainly possible that prudence forbids speculation as to whether he has still time or disposition to keep out of the way. Again and again cases arise in which the proposal is repeated, the vessels coming nearer all the time; sometimes it is repeated even after it has been crossed by a refusal. *No substantial interest is at stake except to escape collision which will certainly be avoided if both stop.* We recognize that the requirement puts a premium upon wilfulness, for the burdened vessel need only announce her purpose and keep on; and if the other prove docile, she has lost her right of way and must bear the insolence. This may perhaps prove too much for ordinary human nature, but 'safety is better than pride'; [*The Quogue*, 47 F. (2d) 873 (C.C.A. 2)], and stopping is more likely to avoid disaster than going on in the teeth of what is at least a proposal, and may be a declaration. *At any rate the situation appears to us proper for the exercise of the inspectors' function in providing for cases not covered explicitly. They are certainly in better position than we to determine which course is safer in the long run.*

"The court as now constituted cannot see any conflict with the statute, unless that be read without regard to its purpose. Articles nineteen and twenty-one (33 USCA §§204, 206) do not require any signals at all; if one is given proposing a dangerous course, it appears to us too verbal and rigid an interpretation to say that the privileged vessel is inevitably still bound; at least officials, vested with general authority, are not helpless to meet the situation by a rule. All the steaming rules are themselves

subject to Article twenty-seven (33 USCA §212) authorizing a departure 'to avoid immediate danger.' Can it be that though vessels themselves may so depart, the inspectors may not say that a situation likely to be dangerous shall be treated as such? However, unless the Supreme Court chooses finally to settle the whole matter otherwise, in crossing situations we have no option and shall continue to disregard the rule, whatever our personal judgment." (*The Fulton*, 54 F. (2d) 467, at 468; our italics.)

Because *The Fulton* case was found to involve a head-and-head situation, as to which the court did not feel precluded by its former decisions from recognizing the validity of Rule II, the court held a vessel at fault for sounding a cross-signal in violation of that Rule. Both vessels were held to blame, and there was no substantial reason for either party to seek a review in that case.

This case is the first since the opinion in *The Fulton* case was delivered to involve the point that was there so clearly discussed and is here so squarely presented.

It is probably unnecessary to mention that this point cannot possibly arise, and no similar uncertainty can exist, under the statutory International Rules, governing navigation on the high seas, as the one-blast and the two-blast signals there provided for may be given only to indicate a change of course on the part of the signalling vessel (33 U. S. Code §113; 26 Stat. 328, Art. 28). Under the statutory Inland Rules, here involved, those signals are prescribed by the statute itself only for head-and-head situations and for overtaking situations, in which both vessels must sound the appropriate signals for passing each other (49 Stat. 669, Art. 18; 33 U. S. Code §203). No statutory provision was made for any signals between vessels on crossing courses. That whole subject, of primary importance in navigation on the inland waters, is covered by Rule VII, in connection with Rules II and III, of the Supervising Inspectors.

Reasons Relied on for Allowance of Writ.

1. It was the intention of Congress, as this court has mentioned, that the Supervising Inspectors' Rules "*have the force of statutory enactment* • • • Obviously they must be rigorously enforced in order to attain the objects for which they were framed • • • " (*Belden* v. *Chase*, 150 U. S. 674, 698).

2. A serious conflict between the Supervising Inspectors' Rules and the decisions of the Circuit Court of Appeals for the Second Circuit as to the construction of a Federal statute for the prevention of collisions, is at best a disturbing condition. When all of the reasons for it have vanished from the mind of the court that created the conflict, its perpetuation through inertia is not creditable to the administration of the maritime law of the United States.

3. The licensed officers of steam vessels are subject to the disciplinary action of the Supervising Inspectors for a violation of their Rules (33 U. S. Code, § 158; 46 U. S. Code § 239), and so long as the present conflict exists an officer must choose in every case of this kind whether to obey the Inspectors' Rules, at the risk of losing his own command and rendering his employer liable in damages, or to disregard those Rules, as the court below holds he should, at the risk of losing his license. Uncertainty among shipmasters as to the laws by which they should be governed is hardly conducive to the safety of navigation.

4. The decision below is diametrically opposed to the applicable statutes. In providing that the so-called privileged vessel should maintain her course and speed (33 U. S. Code § 206), Congress directed also that she must depart therefrom to avoid an "immediate danger" of "navigation and collision" (*id.* § 212). At the same time Congress empowered the Supervising Inspectors to establish, with the approval of the Secretary of Com-

merce, such Rules as "they may from time to time deem necessary for safety" (*id.* § 157). Among the Rules so established is one that undertakes to define a specific occasion of "immediate danger", an occasion which the experienced court below now appreciates is in truth of "immediate danger", namely a burdened vessel's unacceptable proposal of an imminent departure from the law. In admitting that the Inspectors' definition is right, and that the court was itself wrong in formerly thinking otherwise, the distinguished judges below are left without the justification that their predecessors enjoyed in disregarding what is in fact the statutory law.

> 5. "It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past." Holmes, *J.*, 10 Harv. L. R., l. c. 469.

To this a private litigant might add that in his case a wrong rule on vanished grounds has prevailed against the considered views of the experienced judges who heard his case, and against the will of those to whom Congress entrusted the making of a proper rule that was to have "the force of statutory enactment."

Conclusion.

It is respectfully submitted that this controversy, immediately presenting an important question of the maritime law that has not been decided by this court; directly involving the construction of a Federal statute for the prevention of collisions, and reflecting a serious conflict between a Circuit Court of Appeals and an administrative agency created by Congress, is of such general concern as to merit review by this honorable court.

JOHN C. CRAWLEY,
EARLE FARWELL,
for the Petitioner.

New York, May , 1939.

Appendix.

Statutes.

33 U. S. Code §157. "*Special rules by inspectors, etc., of steam vessels authorized.* The supervising inspectors of steam vessels and the Director of the Bureau of Marine Inspection and Navigation shall establish such rules to be observed by steam vessels in passing each other and as to the lights to be carried by ferryboats and by barges and canal boats when in tow of steam vessels, and as to the lights and day signals to be carried by vessels, dredges of all types, and vessels working on wrecks or other obstruction to navigation or moored for submarine operations, or made fast to a sunken object which may drift with the tide or be towed, not inconsistent with the provisions of this Act [U. S. Code §§154 to 231, inclusive], as they from time to time may deem necessary for safety, which rules when approved by the Secretary of Commerce are declared special rules duly made by local authority, as provided for in article 30, chapter 802, laws 1890 [33 U. S. Code, section 131]. Two printed copies of such rules shall be furnished to such ferryboats, barges, dredges, canal boats, vessels working on wrecks, and steam vessels, which rules shall be kept posted up in conspicuous places in such vessels, barges, dredges, and boats." (Act of June 7, 1897, c. 4, §2; 30 Stat. 102; Act of June 30, 1932, c. 314, §501, 47 Stat. 415; Government Pamphlet, p. 9).

33 U. S. Code §206. "*Vessel having right of way to keep course.* Art. 21. Where, by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed." (June 7, 1897, c. 4, §1, 30 Stat. 101; Government Pamphlet, p. 8).

33 U. S. Code §212. "*Special circumstances requiring departure from rules.* Art. 27. In obeying and construing these rules due regard shall be had to all dangers of navi-

gation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger." (June 7, 1897, c. 4, §1, 30 Stat. 102; Government Pamphlet, p. 8).

Supervising Inspectors' Rules.

"RULE II. Steam vessels are forbidden to use what has become technically known among pilots as "CROSS SIGNALS", that is, answering one whistle with two, and answering two whistles with one." (Government Pamphlet, p. 18).

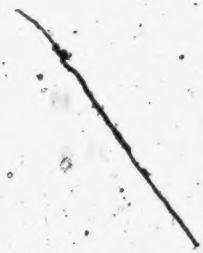
"RULE III. The *signals for passing*, by the blowing of the whistle, shall be given and answered by pilots, in compliance with these rules, not only when meeting "head and head", or nearly so, but at all times when the steam vessels are in sight of each other, when passing or meeting at a distance within half a mile of each other, and whether passing to the starboard or port.

"The whistle signals provided in the rules for steam vessels meeting, passing, or overtaking are never to be used except when steam vessels are in sight of each other, and the course and position of each can be determined in the daytime by a sight of the vessel itself, or by night by seeing its signal lights. In fog, mist, falling snow, or heavy rainstorms, when vessels can not so see each other, fog signals only must be given." (Government Pamphlet, p. 18).

"RULE VII. When two steam vessels are approaching each other at right angles or obliquely so as to involve risk of collision, other than when one steam vessel is overtaking another, the steam vessel which has the other on her own port side shall hold her course and speed; and the steam vessel which has the other on her own starboard side shall keep out of the way of the other by direct-

ing her course to starboard so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed or stop or reverse.

"If from any cause the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall be at once made apparent by blowing the danger signal, and both steam vessels shall be stopped and backed if necessary, until signals for passing with safety are made and understood." (Government Pamphlet, p. 19).



Supreme Court of the United States

OCTOBER TERM—1939.

NOS. 73 AND 74

POSTAL STEAMSHIP CORPORATION,
Petitioner,

against

STEAMSHIP EL ISLEO, etc.;
SOUTHERN PACIFIC COMPANY,
Respondent.

POSTAL STEAMSHIP CORPORATION,
Petitioner,

against

SOUTHERN PACIFIC COMPANY,
Respondent.

PETITIONER'S BRIEF.

JOHN C. CRAWLEY
EARLE FARWELL
for the Petitioner.

BARRY, WAINWRIGHT, THACHER & SYMMERS,
72 Wall Street, New York City.

Post Printing Company, Inc., 80 Lafayette Street, New York, N. Y.

INDEX

	PAGE
Question presented	2, 3
Facts	3
Decision to be Reviewed (El Isleo's right to sound cross-signal and continue until collision imminent)	5
Vessels subsequently in extremis	6
Argument:	
Essential facts not controverted	8
Analysis by Judge Learned Hand in *The Fulton*	8
Question open in this court	10, 11, 12
Conclusion	13
Appendix (Statutes and Inspectors' Rules)	15
Reproduction El Isleo Exhibit—opposite page 18.	

CITATIONS:

	PAGE
Belden *v.* Chase, 150 U. S. 674	13
Breakwater, The, 155 U. S. 252	11
Britannia, The, 153 U. S. 130	7, 11
Delaware, The, 161 U. S. 459	2, 10, 13
Eastern Glade—El Isleo, opinions below, 20 F. Supp. 373; 101 F. 2d 4	1
Fulton, The, 54 F. (2d) 467	8, 13
Guy *v.* Donald, 203 U. S. 399	12
New York, The, 175 U. S. 187	12
Wilson *v.* Pacific Steamship Company, 276 U. S. 454	11

STATUTES:

33 U. S. Code ch. 2, International Rules, § 106	11
33 U. S. Code ch. 3, Inland Rules, §§ 204, 206, 207, 208, 212, 221	5, 9, 10
33 U. S. Code ch. 4, Great Lakes Rules, § 283, et seq.	3, 12, 14, 15

REVISED STATUTES:

§ 4233	12

MISCELLANEOUS:

Supervising Inspectors' Rules, Certain Inland Waters	15, 16, 17
Supervising Inspectors' Rules, Great Lakes	3, 12, 15

Supreme Court of the United States

OCTOBER TERM, 1939.

POSTAL STEAMSHIP CORPORATION, Petitioner, AGAINST Steamship EL ISLEO, etc.; SOUTHERN PACIEIC COMPANY, Respondent.	No. 73
POSTAL STEAMSHIP CORPORATION, Petitioner, AGAINST SOUTHERN PACIFIC COMPANY, Respondent.	No. 74

PETITIONER'S BRIEF.

Certiorari was granted on October 9, 1939, to review a decision of the Circuit Court of Appeals for the Second Circuit, in admiralty, affirming two decrees of the District Court for the Southern District of New York, one a final decree dismissing the petitioner's libel against the respondent's steamship El Isleo, and the other an interlocutory decree in favor of the respondent upon its cross-libel against the petitioner's steamship Eastern Glade.

The opinion of the Circuit Court of Appeals (R. 281), from which we quote below, is reported in 101 F. (2d) 4, and that of the District Court in 20 F. Supp. 373.

Statement.

This is a case of collision between the petitioner's steamship Eastern Glade and the respondent's steamship El Isleo which occurred near the junction of Curtis Bay Channel and Fort McHenry Channel in the waters of Baltimore Harbor at 5:40 p.m., on December 19, 1935. The vessels were on crossing courses, the Eastern Glade having El Isleo on her starboard hand. Both vessels sustained damage. The courts below have found the petitioner's vessel solely at fault.

The Question Presented.

By the statutory starboard-hand rule, where two steamships are on crossing courses the one having the other to starboard is required to keep out of the way and the other is required to keep her course and speed.

In the absence of a *distinct indication* that the so-called burdened vessel is about to fail in her duty, the point at which the so-called privileged vessel must herself take action to avoid collision is the point at which it becomes evident to her navigator that the burdened vessel alone cannot avoid collision.

What does or should constitute a "distinct indication" that the burdened vessel is about to fail in her duty always has been a perplexing question.

In the case of *The Delaware*, 161 U. S. 459, at 469, (*infra*, p. 10), this court recognized and left open the question whether, in the inland waters, a two-blast signal, or an alarm signal, from the burdened vessel would constitute such an indication.

By the Act of June 7, 1897 (ch. 4 § 2, as amended), adopting the present statutory Inland Rules, the Supervising Inspectors of Steam Vessels and the Director of the

Bureau of Marine Inspection and Navigation were empowered to "establish such rules to be observed by steam vessels in passing each other * * * not inconsistent with [the statute] * * * as they from time to time may deem necessary for safety, which rules when approved by the Secretary of Commerce," shall have the force of the statutory enactments (33 U. S. C. § 157).*

In pursuance of their authority the supervising inspectors adopted regulations which, in substance, provide that where the so-called privileged vessel in a crossing situation receives an unacceptable proposal to cross ahead, the privileged vessel may not maintain her course and speed until collision becomes imminent but at once must sound danger signals and stop and back if necessary until a safe passage has been agreed upon.

The question presented is whether those regulations of the supervising inspectors, specifically Rules II and VII of the Pilot Rules for Certain Inland Waters, are in conflict with Article 21 of the statutory Inland Rules.

In the appendix to this brief the pertinent sections of the statutory Inland Rules, together with the challenged Rules of the Supervising Inspectors (in bold type), are printed in one column, and in the other column are given the comparable provisions of the statutory Rules (and the Inspectors' Rule X) governing navigation on the Great Lakes. The latter are shown only because of their essential similarity to the statutory Inland Rules as supplemented by the challenged Rules of the Supervising Inspectors.

The Facts.

It is believed that the facts sufficiently appear in the following excerpt from the opinion of Judge Swan in the court below, to which the footnotes have been appended by the petitioner.

"The collision occurred in the waters of Baltimore Harbor near the junction of Curtis Bay Channel with

* Set out on page 10 of Petition for Certiorari.

Fort McHenry Channel. The latter is about 600 feet wide and runs in a northwesterly direction toward Baltimore; the former running nearly east and west, comes into Fort McHenry Channel from the west but does not cross it. The night was clear, the tide ebb, and a 15 mile breeze was blowing from the northwest. The steamship Eastern Glade, light, [Note 1] was bound out of Curtis Bay Channel and was intending to turn left into Fort McHenry Channel and proceed to Baltimore. The steamer El Isleo, laden with 1,000 tons of steel ore, also bound for Baltimore, was proceeding up Fort McHenry Channel at full speed—about eight miles through the water, as she was working only one boiler. When the vessels sighted each other they were more than a mile apart, the El Isleo being about four points on the starboard bow of the Eastern Glade. The latter stopped her engines and shortly thereafter sounded a two blast signal to indicate, as her master says, that his course was to the left and up Fort McHenry Channel. El Isleo answered the two blast signal with an alarm followed by one blast, to indicate that she would keep her course and speed. [Note 2] Captain Korn of El Isleo testified that the Eastern Glade responded with four blasts followed by one, while her captain says she responded with three blasts to indicate that she was reversing her engines. El Isleo kept on until she reached a buoy just opposite Curtis Bay Channel, when, believing collision imminent, she put her rudder hard right and swung out of Fort McHenry Channel to her starboard. The Eastern Glade, although her master testified that he intended to hold back in Curtis Bay Channel until El Isleo had passed the junction, came clear across Fort McHenry Channel and brought her

---

NOTE 1. At the time of the collision the Eastern Glade was drawing 7 feet forward and 11.3 feet aft (R. 146). Her bow was high, her propeller half exposed, the hub about at the water line (R. 61). She is a single screw steamer 400 feet long, 54.5 feet wide, of 27.6 feet moulded depth. El Isleo is a single screw steamer 334.6 feet long, 46.1 feet wide, of 26.1 feet moulded depth. (Lloyd's Register.)

NOTE 2. The master of El Isleo testified on direct examination (R. 23):

Q. That one blast signal following the four blast signal indicated what?

A. That I was coming up the channel and I demanded the right to proceed on my way up the channel.

stem into contact with the port side of El Isleo about amidships. The place of collision was east of Fort McHenry Channel. The district court did not determine how far to the east, but McDonald testified it was about 200 yards." [Note 3]

After discussing the converging courses of the two vessels, Judge Swan continued:

"Such converging courses involve the very risk that resulted in the collision, and the rights and duties of the vessels are governed by Articles 19, 22 and 23 of the Inland Rules, 33 U. S. C. A. §§ 204, 207, 208. * * *"

"* * * Accordingly, the District Court was right in treating the situation as one of crossing courses."

The Decision to be Reviewed.

Immediately following the finding that the vessels were on crossing courses the opinion of the Circuit Court of Appeals continued:

"So viewed no fault appears in the navigation of El Isleo, the privileged vessel. To the two blast signal of the Eastern Glade Captain Korn responded with an alarm followed by one blast to indicate his refusal to yield his right of way. In The Fulton, 2 Cir., 54 F. 2d 467, we discussed the rule established in this circuit that in a crossing situation the privileged vessel may 'cross' the signal of the burdened vessel and hold her course and speed until it becomes evident that the burdened vessel either cannot or will not keep out of the way. Although the rule was criticized, we thought it too firmly established to be departed from until the Supreme Court speaks. We still adhere to that view." (Opinion, R. 284)

NOTE 3. This is a mistake on the court's part. McDonald testified that the bearings which he took *after* the collision showed his vessel *then* to be about 200 yards to the eastward of the channel: "That is where we finally came to rest" (R. 204). His vessel proceeded at full speed, turned easterly under hard-right rudder, and her engines were not stopped until about the time of collision (R. 220).

Vessels subsequently *in extremis*.

Having thus held that El Isleo might sound a cross-signal and continue at full speed, the court found no fault in El Isleo's conduct thereafter.

> "The district court found that El Isleo was justified in holding her course and speed until she reached buoy 8 M, when she put her rudder hard right and ran to starboard out of the channel. The evidence amply supports this finding. Nor can her captain be charged with fault because in extremis he chose that chance of avoiding the collision instead of the chance of reversing his engines. The Nordpol, 2 Cir., 84 F. 2d 3. We agree also with the finding that the proof of El Isleo's navigation overcame any presumption of fault arising from the fact that her captain had no pilot's license for the local waters. The fault of the Eastern Glade was glaring and was alone sufficient to account for the disaster; hence any slight doubt as to the propriety of El Isleo's navigation should be resolved in her favor. The City of New York, 147 U. S. 72, 85, 13 S. Ct. 211, 37 L. Ed. 84."

The fundamental question here is not whether El Isleo was in extremis when her master chose to turn out of the channel at Buoy 8 M, or the correctness of what he did then. The fault lay farther back, when El Isleo's master chose to sound a cross-signal and to continue at full speed until the vessels were in extremis.

Both courts below have accepted respondent's contention that the vessels were *in extremis* when El Isleo reached Buoy 8 M, where she turned hard right out of the channel, and have held that her master's election not to reverse at that point is excusable, notwithstanding that the Eastern Glade was seen already to have turned left (McDonald, pilot, R. 219; appended chart, Position G).

Questionable as that conclusion is (cf. *The Otranto*, (H. L.) 18 Asp. Mar. Cas. 193) it is separate from the clear-cut primary proposition before this court, that the

time when El Isleo should have stopped was when the supervising inspectors' rules required her to do so; that is, when her master rejected the two-blast proposal and "demanded the right to proceed". El Isleo could have stopped her headway in about 200 yards by reversing (R. 37), and she was at least that distance below Buoy 8 M when she sounded the alarm and cross-signal (McDonald, R. 219 and 232; appended chart, position A; R. 201, 210). Her master placed her still farther away from the buoy (R. 24).

Her pilot admitted, and her master did not deny, that by reversing at any time before reaching Buoy 8 M, El Isleo could have avoided collision. They tardily argued that the Eastern Glade had answered their four blasts and one blast with like signals (McDonald, deposition Nov. 12, 1936, R. 193, 200, 220; Korn, Trial R. 23). The Eastern Glade's bridge officers had previously testified by deposition (March 16, 1936, R. 104) to a three-blast backing signal (master, R. 147, 148; third officer, R. 123, 124; the chief officer, not on bridge duty, said four blasts, R. 44).

The contention that the Eastern Glade blew four blasts and one was not made in El Isleo's pleadings (R. 5, 11), where surely it would have appeared if respondent originally had intended to assert that there was a one-blast passing agreement (cf. *The Britannia*, 153 U. S. 130 at 140).

The danger signal is defined by the inspectors' Rule I as "several short and rapid blasts, not less than four".

Obviously the four blasts and one blast belatedly testified to by El Isleo's officers were not the "*signals for passing with safety*" required by the inspectors' Rule VII to be "made and understood" before El Isleo should go on (McDonald, R. 201).

The conclusive factor, of course, is that El Isleo's initial fault, in sounding a cross-signal and continuing at full speed, was already operative (R. 33; 218-9).

Argument.

The five facts essential to the determination of the question here involved are not controverted:

1. The vessels were on crossing courses, the Eastern Glade having El Isleo on her starboard hand.
2. The Eastern Glade sounded a whistle signal of two blasts.
3. El Isleo answered with a danger signal and one blast and continued at full speed up to the moment of collision.
4. The Eastern Glade promptly reversed but failed to overcome her headway before collision.
5. If at the time El Isleo sounded the alarm she had stopped and backed her engines there would have been no collision.

Rules II and VII are Salutary and are Not Inconsistent with the Statute.

The following are the material portions of the opinion written by Judge Learned Hand in the case of *The Fulton*, 54 F. (2d) 467, 468, referred to in the opinion below:

> "The Inspectors' Rules have always forbidden cross signals in passing situations, and in all others too since 1909. *They have coupled the injunction with another which required the answering vessel, if the first signal was inappropriate, to sound an alarm and check her speed, now apparently confined to crossing situations* (Rule VII). In a number of decisions involving crossing situations we have exonerated a vessel which pressed her statutory privilege by crossing the signal and holding her course and speed. *The John King* (C. C. A.) 49 F. 469; *The Cygnus* (C. C. A.) 142 F. 85; *The Transfer No. 15* (C. C. A.) 145 F. 503; *The John H. Starin* (C. C. A.) 162 F. 146; *The Montauk* (C. C. A.) 180 F. 697; *The Ashley* (C. C. A.) 221 F. 423.

"Our reasoning has been, that, as the statute (Inland Rules) article 21 (33 USCA § 206), puts a duty upon the privileged ship to keep her course and speed, no rule can be valid which affects to relieve her of it, and that she may announce her determination to insist by crossing the first signal. The doctrine has been too long and too repeatedly established to allow any question now, *but it is plain that the inspectors have never assented to it.* We have at times said that the rule promoted collisions, which were to be avoided only by rigid adherence to the statutory rules. The supposed certainty is, however, somewhat illusory, for concededly there comes a time when the privileged vessel must yield; there is never a 'right of way into collision.' At best the point where she must do so, is one of degree, and, *were the question res integra, we should hold the rule valid.* The inspectors apparently believe that in the greater number of cases it will conduce to collision to allow a pilot to keep on in the face of a proposal by the approaching vessel that she put herself across his bows. True, the proposer often will not act without consent; but it is certainly possible that prudence forbids speculation as to whether he has still time or disposition to keep out of the way. Again and again cases arise in which the proposal is repeated, the vessels coming nearer all the time; sometimes, it is repeated even after it has been crossed by a refusal. *No substantial interest is at stake except to escape collision which will certainly be avoided if both stop.* We recognize that the requirement puts a premium upon wilfulness, for the burdened vessel need only announce her purpose and keep on; and if the other prove docile, she has lost her right of way and must bear the insolence. This may perhaps prove too much for ordinary human nature, but 'safety is better than pride'; [*The Quogue*, 47 F. (2d) 873 (C. C. A. 2)], and stopping is more likely to avoid disaster than going on in the teeth of what is at least a proposal, and may be a declaration. *At any rate the situation appears to us proper for the exercise of the inspectors' function in providing for cases not covered explicitly. They are certainly in better position than we to determine which course is safer in the long run.*

"The court as now constituted cannot see any conflict with the statute, unless that be read without regard to its purpose. Articles nineteen and twenty-one (33 USCA §§ 204, 206) do not require any signals at all; if one is given proposing a dangerous course, it appears to us too verbal and rigid an interpretation to say that the privileged vessel is inevitably still bound; at least, officials, vested with general authority, are not helpless to meet the situation by a rule. All the steaming rules are themselves subject to Article twenty-seven (33 USCA § 212) authorizing a departure 'to avoid immediate danger.' Can it be that though vessels themselves may so depart, the inspectors may not say that a situation likely to be dangerous shall be treated as such? However, unless the Supreme Court chooses finally to settle the whole matter otherwise, in crossing situations we have no option and shall continue to disregard the rule, whatever our personal judgment." (*The Fulton*, 54 F. (2d) 467, at 468; our italics.)

To what Judge Learned Hand has written, there may be added certain other considerations.

In *The Delaware*, 161 U. S. 459, the vessels were on crossing courses, the tug Talisman being the preferred vessel, and the tanker Delaware required to give way. No signals were blown by the Delaware, and on two occasions the Talisman blew a signal of one blast to indicate that she would hold her course and speed. There was nothing to suggest to the Talisman, until the vessels were *in extremis*, that the Delaware would not keep out of the way.

This Court said:

The cases of *The Britannia*, 153 U. S. 130, and *The Northfield*, 154 U. S. 629, must be regarded, however, as settling the law that the preferred steamer will not be held in fault for maintaining her course and speed, so long as it is possible for the other to avoid her by porting, at least in the absence of some distinct indication that she is about to fail in her duty."

The Court added that there had been nothing to suggest to the tug Talisman, until the vessels were *in extremis*,

that the Delaware would not keep out of the way, and concluded, page 469, that if for any reason the Delaware were unable to do so,

"* * * it was her plain duty to apprize the tug of the fact, either by blowing the starboard signal of two whistles or an alarm whistle, to indicate that the circumstances were such as to render it impossible for her to fulfill her obligation to keep out of the way of the tug. *If she had done so a different question would have been presented*" (our italics).

The supervising inspectors have in fact done no more here than to resolve what this court there considered to be an open question. Unless the question were to be answered by Congress directly, it could be resolved only by the supervising inspectors or by the courts.

The reality of that question has not been affected by anything said or decided by this court in any other case. The most closely related cases on which this court has passed since 1880 include:

Wilson v. *Pacific Steamship Company,* 276 U. S. 454, which involved the application of the International Rules (33 U. S. C. ch. 2), and in which the burdened vessel sounded no signal and gave no other indication that she intended to cross ahead. It was expressly noted by Mr. Justice McReynolds that the situation there was indistinguishable from the one presented in *The Delaware, supra.*

The Britannia, 153 U. S. 130, where each vessel sounded a timely signal of one blast, but the privileged vessel, after a final signal of one blast, stopped, reversed, and then remained stationary for a minute and a half in the path of the burdened vessel. Both vessels were held at fault.

The Breakwater, 155 U. S. 252, in which there were three exchanges of one-blast passing signals and no timely intimation that the burdened vessel would not comply with the clear understanding.

In *The New York*, 175 U. S. 187, both vessels were held at fault, the preferred vessel for violation of what was then Rule 21 of the Revised Statutes, § 4233, which provided that every vessel when approaching another vessel so as to involve risk of collision should slacken her speed, or, if necessary, stop and reverse. There were other faults also in that case.

Attention has already been invited to the comparable provisions of the statutory rules for the Great Lakes (33 U. S. Code, Chapter 4) and the statutory Inland Rules, as supplemented by the Supervising Inspectors' rules under consideration. It may be noted that the requirements of No. 26 of the Great Lakes Rules, 33 U. S. Code 291, and the provisions of Rules II, III and VII of the Supervising Inspectors, might be interchanged without altering in any essential particular the duties of the vessels to which the respective rules apply.

It would not be a new experience with names to realize that the use of the word *privileged* to describe the status of the vessel that ordinarily will hold her course and speed, has been unfortunate.

> "As long as the matter to be considered is debated in artificial terms there is danger of being led by a technical definition to apply a certain name, and then to deduce consequences which have no relation to the grounds on which the name was applied." *Guy* v. *Donald*, 203 U. S. 399, 406.

The statute and the inspectors' rules do not use the word *privileged* at all; but both the word and its connotations are evident in the opinions that Judge Hand criticized and in others that he might have mentioned.

When considerations of prestige or special dignity are laid aside, and it is appreciated that the sole purpose of Congress was to provide a way of avoiding collisions, the consistency between the statute and the inspectors' rules is unmistakable.

Conclusion.

It has never been suggested by this court that a so-called privileged vessel should maintain her course and speed in the face of another's two-blast proposal to cross ahead. On the contrary, this court's express recognition of the problem that would be presented in those circumstances is at least consistent with the idea that this court itself, if called on, would have met the problem as the supervising inspectors have done (*The Delaware*, supra).

Nor has this court ever suggested that the Supervising Inspectors are unequal to the business that Congress entrusted to them as experts. Indeed, this court has admonished the lower courts that the inspectors' rules, unless in conflict with the statutes, must be given the force of statutory law. (*Belden* v. *Chase*, 150 U. S. 674, 698.)

Judge Learned Hand's analysis in *The Fulton* case leaves no room to doubt the correctness of the conclusion that has been reached by the present members of the Circuit Court of Appeals as to the efficacy as well as to the validity of the Inspectors' Rules.

Petitioner does not agree with so much of the decision below as holds El Isleo free from fault if the Inspectors' Rules are invalid, but presumably petitioner must bow here to that part of the decision. It is manifest, however, that unless this court finds those rules invalid, El Isleo was at fault with the Eastern Glade.

It is most respectfully submitted that the decrees below should be reversed, with directions to enter a mutual-fault decree in each case.

JOHN C. CRAWLEY,
EARLE FARWELL,
for the Petitioner.

New York, November, 1939.

Appendix.

Statutory Rules and Inspectors' Rule X for the Great Lakes. (33 U. S. Code, ch. 4)	*Statutory Rules and Inspectors' Rules II, III and VII for the Inland Waters.* (33 U. S. Code, ch. 3)
§ 283. Rule 18.	§ 204. Art. 19:
"When two steam vessels are crossing so as to involve risk of collision the vessel which has the other on her own starboard side shall keep out of the way of the other."	
§ 285. "Rule 20. Where, by any of the rules in this chapter prescribed, one of two vessels shall keep out of the way, the other shall keep her course and speed."	§ 206. "Art. 21. Where, by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed."
Supervising Inspectors':	§ 207: "Art. 22. Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other."
"Rule X. When two steamers are approaching each other at right angles or obliquely so as to involve risk of collision, other than when one steamer is overtaking another, the steamer which has the other on her own port side shall hold her course and speed; and the steamer which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steamer, or, if necessary to do so, slacken her speed or stop or reverse. The steamer having the other on her own port bow shall blow one blast of her whistle as a signal of her intention to cross the bow of the other, holding her course and speed, which signal shall	

(Great Lakes)

be promptly answered by the other steamer by one short blast of her whistle as a signal of her intention to direct her course to starboard so as to cross the stern of the other steamer or otherwise keep clear.

"If from any cause whatever the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall be at once made apparent by blowing the danger signal, and both steamers shall be stopped, and backed if necessary, until signals for passing with safety are made and understood."

§ 286. Rule 21.

"Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop and reverse."

§ 291. "Rule 26. If the pilot of a steam vessel to which a passing signal is sounded deems it unsafe to accept and assent to said signal, he shall not sound a cross signal; but in that case, and in every case where the pilot of one steamer fails to understand the course or intention of an approaching steamer,

(Inland)

§ 208. Art. 23:

Supervising Inspectors':

"Rule II. Steam vessels are forbidden to use what has become technically known among pilots as 'CROSS SIGNALS', that is, answering one whistle with two, and answering two whistles with one."

"Rule III. The SIGNALS FOR PASSING, by the blowing of the whistle, shall be given and answered by pilots, in compliance with these rules, not only when meeting "head and head", or nearly so, but at all times

(Great Lakes)

whether from signals being given or answered erroneously, or from other causes, the pilot of such steamer so receiving the first passing signal, or the pilot so in doubt, shall sound several short and rapid blasts of the whistle; and if the vessels shall have approached within half a mile of each other both shall reduce their speed to bare steerageway, and, if necessary, stop and reverse."

(Inland)

when the steam vessels are in sight of each other, when passing or meeting, at a distance within half a mile of each other, and whether passing to the starboard or port.

"The whistle signals provided in the rules for steam vessels meeting, passing, or overtaking are never to be used except when steam vessels are in sight of each other, and the course and position of each can be determined in the daytime by a sight of the vessel itself, or by night by seeing its signal lights. In fog, mist, falling snow, or heavy rainstorms, when vessels can not so see each other, fog signals only must be given."

"Rule VII. When two steam vessels are approaching each other at right angles or obliquely so as to involve risk of collision, other than when one steam vessel is overtaking another, the steam vessel which has the other on her own port side shall hold her course and speed; and the steam vessel which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed or stop or reverse.

(Great Lakes) (Inland)

"If from any cause the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall be at once made apparent by blowing the danger signal, and both steam vessels shall be stopped and backed if necessary, until signals for passing with safety are made and understood."

§ 292. Rule 27. § 212. Art. 27:

"In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger."

§ 293. Rule 28. § 221. Art. 29:

"Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

Opposite chart, reproduction of McDonald El Isleo Exhibit A, (R. 201).

Positions as testified to by El Isleo's Pilot, McDonald:

E, F. Positions of the vessels when El Isleo first saw Eastern Glade. E, indicates El Isleo. F, indicates Eastern Glade (R. 209-10).

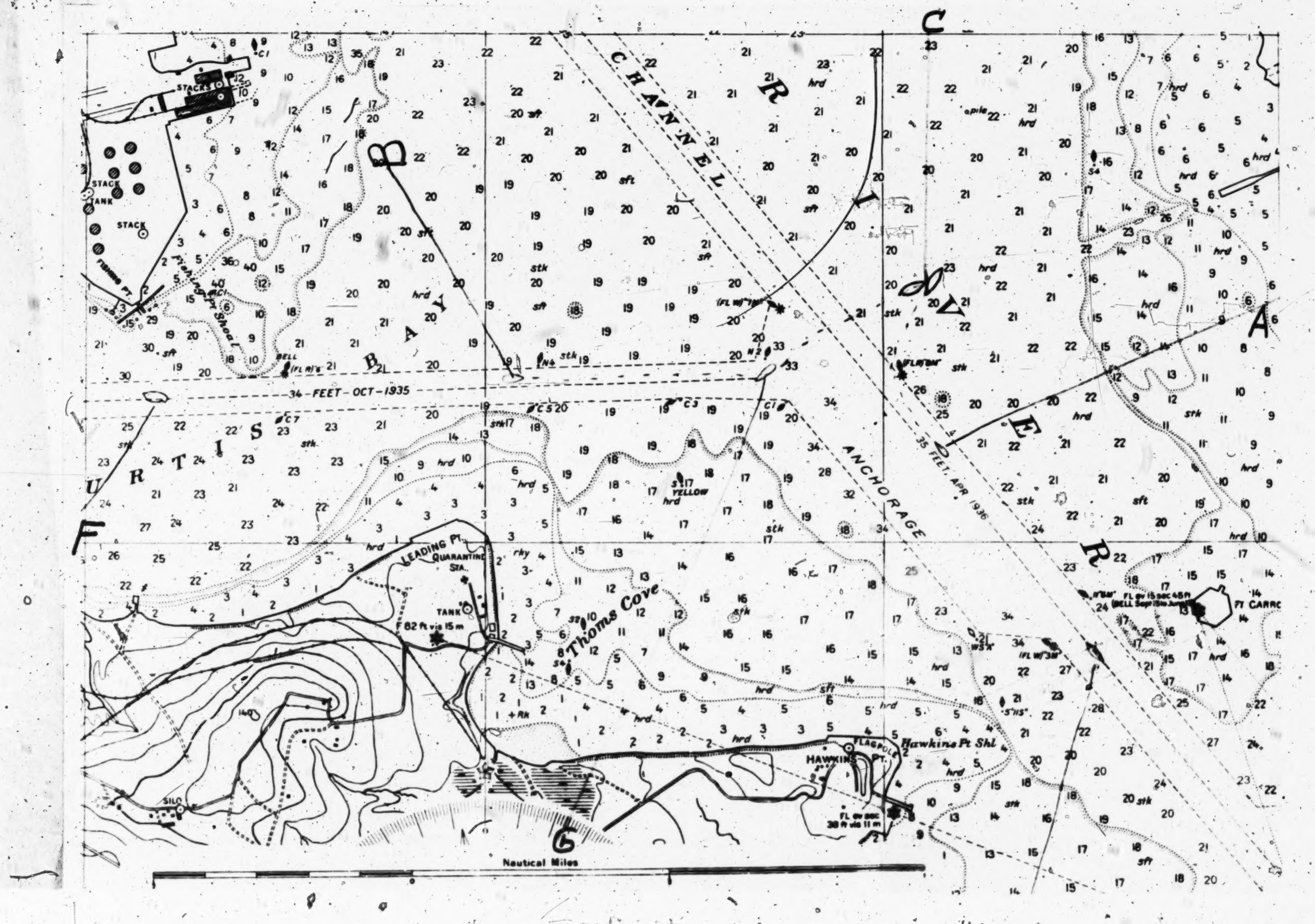
B. When Eastern Glade blew two blasts (R. 201).

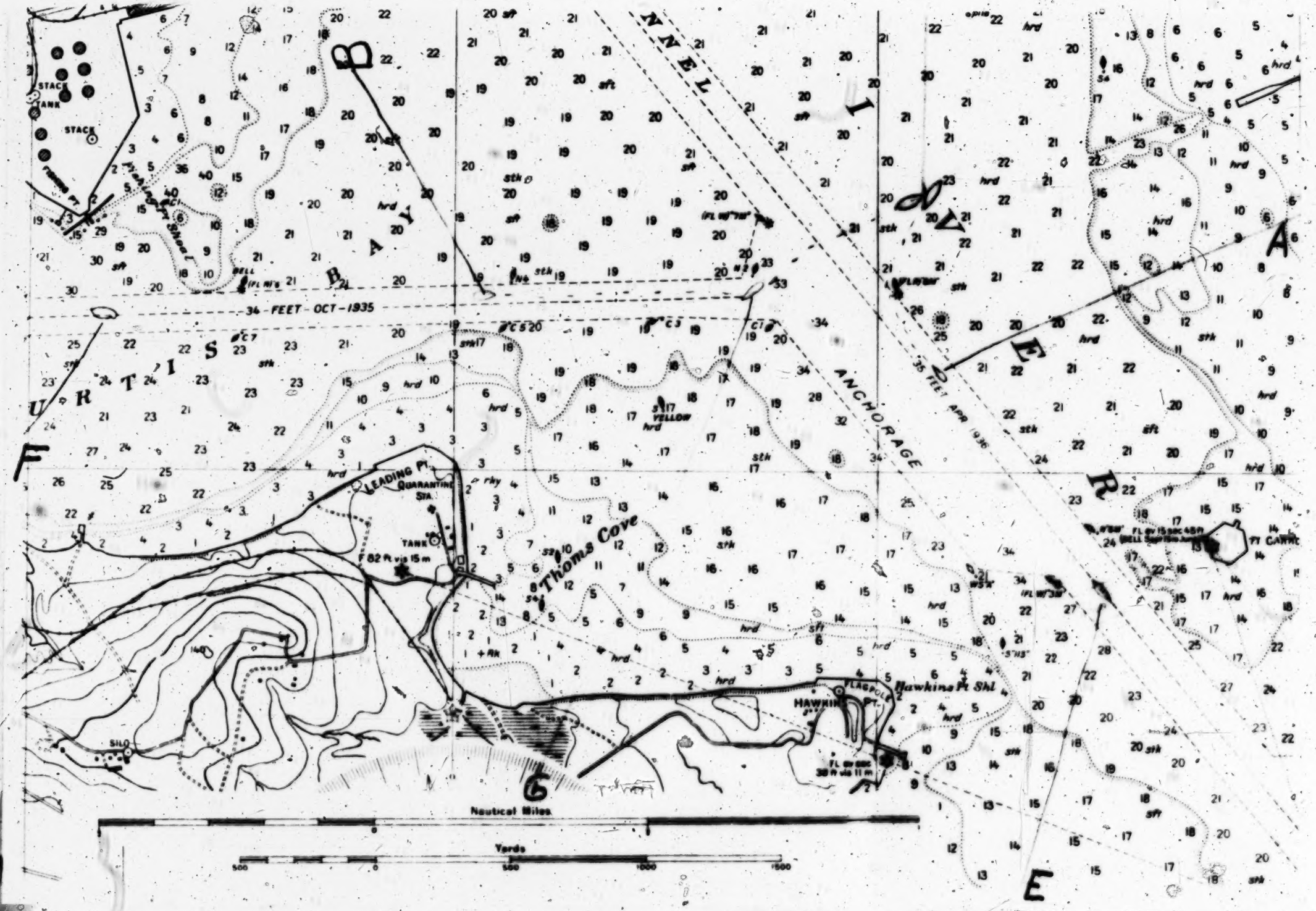
A. When El Isleo sounded alarm and one blast (R. 201).

G. Position of Eastern Glade when El Isleo was abreast Buoy 8M (R. 219).

C. Way in which vessels came together (R. 202-3).

Eastern Glade's testimony was that El Isleo delayed nearly two minutes before answering Eastern Glade's two blast signal (master, R. 148; third officer, R. 123). El Isleo witnesses testified that they answered promptly (master, R. 37; pilot, R. 199).


CHANNEL
BAY
FURTIS
ANCHORAGE
35 FEET, APR 1936
34 - FEET - OCT - 1935
LEADING PT.
QUARANTINE STA.
TANK
F 82 ft vis 15 m
Thoms Cove
HAWKINS PT.
FLAGPOLE
Hawkins Pt Shl
FL or 15 sec 48 m
BELL Sept Bio Junction
FT CARRO
SILO
STACKS
STACK
TANK
STACK
Nautical Miles


BAY
CHANNEL
RIVER
34 FEET OCT 1935
ANCHORAGE
35 FEET APR 1936
LEADING PT
QUARANTINE STA
TANK
STACK
STACK TANK
SILO
Thoms Cove
HAWKINS PT
FLAGPOLE
Hawkins Pt Shl
77 CAMP
Nautical Miles
Yards

FILE COPY

Supreme Court of the United States

OCTOBER TERM—1939.

NOS. 73 AND 74

POSTAL STEAMSHIP CORPORATION,
Petitioner,

against

STEAMSHIP EL ISLEO, etc.;
SOUTHERN PACIFIC COMPANY,
Respondent.

POSTAL STEAMSHIP CORPORATION,
Petitioner,

against

SOUTHERN PACIFIC COMPANY,
Respondent.

PETITIONER'S REPLY BRIEF.

JOHN C. CRAWLEY
EARLE FARWELL
for the Petitioner.

BARRY, WAINWRIGHT, THACHER & SYMMERS,
72 Wall Street, New York City.

Post Printing Company, Inc., 80 Lafayette Street, New York, N. Y.

INDEX.

Table of Cases Cited.

	PAGE
Belden *v.* Chase, 150 U. S. 674, 698	2
Choctaw, The, 270 Fed. 114, 120	3
City of New York, The, 147 U. S. 72	7
Delaware, The, 161 U. S. 459, 469	4, 6
Dexter, The, 23 Wall. 69, 76	7
Geo. W. Roby, The, 111 Fed. 601, 609	3
Lie *v.* San Francisco & Portland S. S. Co., 243 U. S. 291, 298	2
Martello, The, 153 U. S. 64, 74	2
Montauk, The, 180 Fed. 697	15
Wilson *v.* Pacific Mail S. S. Co., 276 U. S. 459	4

Cases cited in respondent's brief, and discussed in appendix hereto.

	Resp. Br. Page	Appendix Page
Ada, The-Sappho, 1 Asp. M. C. 475	15	9
Albano, The, 1907 A. C. 193	13	
Ashbourne, The, 181 Fed. 815	35	
Ashley, The, 221 Fed. 423	22	
Atlas Transp. Co. *v.* Lee Line, 235 Fed. 492	33	
Belden *v.* Chase, 150 U. S. 674	24	
Blue Jacket, The, 144 U. S. 371	33	
Boston, The, 277 Fed. 36	26	
Boston Socony, The, 63 F. (2d) 246	12, 33	10
Boyers, L., & Sons *v.* U. S., 195 Fed. 490	22	
Breakwater, The, 155 U. S. 252	13, 15, 23	
Britannia, The, 153 U. S. 130	27	
Chatham, The, 52 Fed. 396	33	
Chicago, The, 125 Fed. 712	22	11
City of Augusta, The, 80 Fed. 297	33	
City of New York, The, 147 U. S. 72	34	

	Resp. Br. Page	Appendix Page
Columbia, The, 109 Fed. 660	33	
Columbia, The, 205 Fed. 898	10	
Commonwealth & D. Line *v.* U. S., 20 F. (2d) 729	15	12
Cranford, The, 27 F. (2d) 710	34	
Cygnus, The, 142 Fed. 85	22	
Delaware, The, 161 U. S. 459	18, 21, 25	
Elizabeth, The, 197 Fed. 160	27	
Flemington, The, 204 Fed. 980	10	
Florence, The, 68 Fed. 940; 89 Fed. 1015	27	
Fort St. George, The, (2d) 788	35	
Fred B. Dalzell, Jr., The, 45 F. (2d) 580	16	13
Fulton, The, 54 F. (2d) 467	22	
George S. Schultz, The, 84 Fed. 508	22	
Greenpoint, The, 31 Fed. 231	16	
Haida, The, 191 Fed. 623, 196 Fed. 1005	22, 26	
Hallgrim, The, 20 F. (2d) 720	30	
Haven Belle, The, 85 F. (2d) 939	13	14
John H. Starin, The, 162 Fed. 146	20, 21	
John King, The, 49 Fed. 469	21, 22	
Lexington, The, 275 Fed. 279	15	
Maggie J. Smith, The, 123 U. S. 349	32	15
Manx Admiral, The, 60 Lloyds List 11	31	
Merritt-Chapman *v.* Texas Co., 98 F. (2d) 719	38	18
Minnesota S. S. Co. *v.* Lehigh Valley, 129 Fed. 22, 28	33	15
Munrio, The, 11 F. (2d) 900	31	
Nacoochee, The, 137 U. S. 330	33	
Nereus, The, 23 Fed. 448	13	16
New York, The, 175 U. S. 187	27	
Nordpol-Condor, 84 F. (2d) 3	15	
Norfolk, The, 297 Fed. 251	22	
Oregon, The, 158 U. S. 186	13, 14	
Pacific, The, 154 Fed. 943	33	17
Pawnee, The, 168 Fed. 371	21	
Persian, The, 224 Fed. 441	35	
Piankatank, The, 87 F. (2d) 806	16, 26	
Pocomoke, The, 150 Fed. 193	15	
Ponce, The, 116 Fed. 55	31	18
Reading Co. *v.* Sabine Co., 91 F. (2d) 112	21	
San Simeon, The, 63 F. (2d) 798	38	

	Resp. Br. Page	Appendix Page
Scranton, The, 221 Fed. 609	22	
Thielbek, The, 241 Fed. 209	16	
Transfer No. 15, The, 145 Fed. 503	20	
Umbria, The, 166 U. S. 404	30	19
Victory, The, Plymothian, 168 U. S. 410	25, 35	
West Point, The, 85 F. (2d) 63	25, 26, 33	
Wilson v. Pacific Mail Co., 276 U. S. 454	26, 31	20

Statutes Cited.

	PAGE
Act of June 7, 1897, ch. 4, §§1, 2	2
33 U. S. Code §§ 154, 157	2
33 U. S. Code § 158	4
46 U. S. Code § 239	4

Supreme Court of the United States

OCTOBER TERM, 1939.

POSTAL STEAMSHIP CORPORATION, Petitioner, AGAINST Steamship EL ISLEO, etc.; SOUTHERN PACIFIC COMPANY, Respondent.	No. 73
POSTAL STEAMSHIP CORPORATION, Petitioner, AGAINST SOUTHERN PACIFIC COMPANY, Respondent.	No. 74

PETITIONER'S REPLY BRIEF.

The fault of the Eastern Glade in failing to hold back in Curtis Bay Channel is admitted, and regardless of respondent's discursions the only question here is one of law,—the validity of the supervising inspectors' requirement that El Isleo *stop*, and reverse if necessary, when the Eastern Glade sounded her two-blast signal. Indisputably that signal was sounded a considerable time before the vessels were *in extremis*. Indisputably also the only reason El Isleo did not stop at that time was because her master persisted in his so-called right to "cross" the Eastern Glade's signal and go on at full speed until he reached buoy 8M, where collision was imminent (R. 22, 33).

Unless this court shall hold the inspectors' rules to be

void, El Isleo stands in the position of any other vessel that has breached a rule of navigation, and she can escape liability only by an affirmative showing that her infraction did not contribute, and could not have contributed, to the collision. No such showing is possible here, for the contrary actually appears, but the settled presumption alone would be enough.

> "This is a presumption which attends every fault connected with the management of the vessel, and every omission to comply with a statutory requirement, *or with any regulation deemed essential to good seamanship.* In The Pennsylvania, 19 Wall. 125, 136, it was said that 'in such a case the burden rests upon the ship of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been'." (Our italics.) *The Martello,* 153 U. S. 64, at p. 74. See also *Lie* v. *San Francisco & Portland S. S. Co.,* 243 U. S. 291 at 298; and *Belden* v. *Chase,* 150 U. S. 674 at 698.

That the inspectors' rules if not inconsistent with the statute are of equal authority with the statutory rules, admits of no doubt. Both are declared by Congress in the same Act to be "special rules duly made by local authority". (June 7, 1897, ch. 4, §§ 1, 2; 33 U. S. C. §§ 154, 157.)

Decisions Cited by Respondent.

In view of the number and variety of the reported cases cited in the respondent's brief, it has seemed advisable to list them alphabetically in the appendix to this brief, with a short comment on each case.

The Asserted Conflict.

Respondent's major contention seems to be that Article 21 of the Inland Rules *essentially* requires or permits the privileged vessel to maintain her course and speed until, in the opinion of her pilot, collision has become unavoidable by any action on the part of the burdened vessel alone.

Article 21 of the Inland Rules does not so provide, and it is clear that the asserted inference from the Article is not in any sense its exclusive corollary. So much is proved by the statutory Great Lakes Rules 20 and 26, the former identical with Article 21 of the Inland Rules and the latter, like Rules II and VII of the Supervising Inspectors, prohibiting cross-signals and requiring both vessels to check their speeds. (*Geo. W. Roby*, (C. C. A. 6th) 111 Fed. 601, 609; *The Choctaw*, (C. C. A. 6th) 270 Fed. 114, 120.)

In the same way, unless it shall be said that Rules 20 and 26 of the statutory Great Lakes Rules are inconsistent with each other, it must be granted that there is no inconsistency between the general provision of Article 21 and any specific regulation, whether by Congress or by the inspectors, that fixes a reasonable point at which the privileged vessel must take action to avoid collision.

It is not that the privileged vessel may be forced to yield her right of way, but that since her right of way does not, on any interpretation of Article 21, extend to the point of collision, it may be ended, consistently with that Article, at any earlier point where safety is ordinarily assured and beyond which the avoidance of collision is less predictible.

Nor is there anything in the inspectors' regulations that may be construed as granting a right of way to the burdened vessel. On the contrary the regulations require *both* vessels to stop, not the privileged vessel alone; and

for a failure to observe any of the provisions of the Inland Rules or of the inspectors' regulations an offending officer is liable to a penalty of fifty dollars and to the suspension or revocation of his license by the inspectors (33 U. S. C. § 158; 46 id. § 239).

To say, as respondent does (page 25), that the privileged vessel's compliance with the inspectors' regulations will "produce a timidity and feebleness of action", is to misapply a classical expression of this court's, and to ignore the precise situation to which the regulations are addressed. This court used the quoted words with reference to a situation in which the burdened vessel had given no signal or other indication of her purpose; never with reference to a situation in which the burdened vessel had given a two-blast signal of her intention to cross ahead (*The Delaware*, 161 U. S. 459, 469; *Wilson* v. *Pacific Mail S. S. Co.*, 276 U. S. 454). It is to the latter situation alone that the present regulations apply.

Respondent's Discussion of Facts.

The Eastern Glade's navigation was not contrary to her signals, as asserted on page 4 of respondent's brief. According to the Pilot Rules, "Two short blasts of the whistle signify intention to direct course to own port" (Government Pamphlet, top of page 19). (The statutory Inland Rules do not prescribe the signals for vessels on crossing courses.) El Isleo's officers were stout in their insistence that they could and did construe that two-blast signal *only* as announcing the Eastern Glade's intention to cross their bows (El Isleo master, R. 33; El Isleo pilot, R. 213, 214); and as El Isleo's master added, "That is what happened" (R. 33). *Respondent would slur the keynote*, for it was on receipt of the Eastern Glade's two-blast signal that the inspectors' rules required that El Isleo sound only the alarm, and that "both steam vessels

shall be stopped,* and backed if necessary, until signals for passing with safety are made and understood."

Respondent repeatedly asserts that El Isleo's signals did not mislead the Eastern Glade, and that the Eastern Glade, despite her two-blast signal, did not actually intend to cross El Isleo's bows but did so as a result of her master's "miscalculation". It would be a strange rule that was designed to render harmless a stated condition of danger, but which would apply only if the author of the stated condition testified after the event that he had actually *intended* it to be dangerous. The whole purpose of the present rule is to prevent speculation on the part of the privileged vessel either as to the correctness of the burdened vessel's calculations or as to the propriety of her intent, once she has sounded a two-blast signal.

Respondent's statement of the facts (page 8) omits to mention that the Eastern Glade, after stopping her engines at 5:34, did not sound her two-blast signal until a minute and a half or two minutes later; El Isleo did not answer, according to the Eastern Glade's witnesses, for about two minutes (El Isleo's master first testified, before the inspectors, that it was no more than a minute; on the trial it was no more than twenty seconds: R. 37); when El Isleo answered, with the danger signal and one blast, the Eastern Glade reversed promptly (R. 148). The time logged was 5:38, two minutes before the collision.

---

* The comma after the word "stopped" seems to have been omitted by inadvertence from the reprints of Rule VII after the edition of the Pilot Rules dated July 25, 1911. No intended change in the rule was noted, however, and the absence of the comma from the edition of May 1, 1912, and subsequent editions was evidently an oversight. The same language, with the original punctuation, has continued to be used in the Pilot Rules for the Great Lakes, Rule X of which corresponds with Rule VII of the Inland Pilot Rules. Both are quoted in our original brief, pages 15 and 17. Moreover, it is plain that Rules II and VII would lose all purpose, and be worse than useless, unless it were intended that both vessels stop. If the matter were left optional with the pilot of the privileged vessel, there would be no point whatever in those rules. See the opinion in *The Fulton*, our original brief, p. 9.

There is no evidence to support respondent's irrelevant assertion (page 9) that there may have been something the matter with the Eastern Glade's steering gear. The steering gear was proved to have been tested before leaving the dock (R. 112). It was in good order: master, R. 155; chief engineer, R. 108; assistant engineer, R. 142, steersman, R. 104.

Respondent's suggestion, pages 17-24, that Rule II of the Supervising Inspectors applies only to head-and-head situations, is untenable. The decisions referred to by respondent on that point (discussed in the appendix hereto) were rendered when the Inspectors' prohibition of cross-signals was limited to head-and-head situations; the present prohibition is not so limited. The quotation from *The Delaware*, page 18, also refers to earlier regulations that are inapplicable here.

On page 23 of its brief respondent refers to Rule III of the Supervising Inspectors. That rule is not involved in this case because the vessels did exchange signals.

Respondent's belated contention,* put forward between pages 19 and 29, "that irrespective of the original proposal by the Eastern Glade an agreement had been reached whereby the Eastern Glade would hold back and grant El Isleo the privilege to which she was entitled," is patently unsubstantial.

If the Eastern Glade sounded the backing signal of three blasts, as her master testified, the signal was no assurance

*While the statement in our former brief, page 7, is literally correct that there was no contention in El Isleo's pleadings that the Eastern Glade sounded four blasts and one blast, we had inexcusably overlooked (as is pointed out in the second footnote on page 29 of respondent's brief) that the words do appear, irresponsively, among the "admissions" in her answer (R. 4, Article Third); but they do not appear among her allegations of the "true facts" (R. 5, Seventh) nor is there any mention of the matter in her libel (R. 10-12). It remains that respondent had no basis for contending, and did not contend in its pleadings, that there was a one-whistle passing agreement.

that the Eastern Glade actually would succeed in keeping out of the way.

If, on the other hand, El Isleo's testimony be credited, that the Eastern Glade blew four blasts followed by one blast, *those whistles necessarily included the danger signal.* Only a single blast of the whistle unaccompanied by any other signal could be said to constitute the assurance that El Isleo now contends she was justified in relying upon. That the vessels exchanged no "signals for passing with safety" is proved by the event, as well as by the direct testimony of El Isleo's pilot:

> "Q. As the vessels came on, did you at any time think there was danger of collision?
> A. I thought so all the time after the danger signals were exchanged.
> Q. That is, after each vessel blew danger signals?
> A. Yes." (R. 201.)
>
> * * * * * * *
>
> "Q. If she continued on and you continued on, a collision was going to happen?
> A. Exactly.
> Q. You realized that as soon as she blew the two whistles?
> A. Yes.
> Q. And you blew the alarm whistle?
> A. That is right, sir." (cross-examination, R. 217.)

Between pages 29 and 32 respondent argues that El Isleo's errors, if any, were *in extremis,* and that the faults of the Eastern Glade were glaring and alone sufficient to account for the disaster, so that any slight doubt as to the propriety of El Isleo's navigation should be resolved in her favor under the doctrine of *City of New York,* 147 U. S. 72. The fallacy of that argument here is that El Isleo's infractions of Rules II and VII *were not in extremis.* The asserted doctrine has no application in favor of a vessel that has committed a positive breach of the collision regulations, the effects of which are, *or even may possibly be,* persistent down to the time of collision (Page 2, *supra; The Dexter,* 23 Wall. 69, 76).

The statement on page 32, and the intimation elsewhere in the respondent's brief, that "the master of El Isleo decided that the best chance of avoiding collision was in holding her course and speed," is opposed to the testimony of her witnesses (master, R. 23, 24, 37; pilot R. 219, 232), and is without support in the findings of the courts below (our original brief, pp. 6 and 7).

Respondent's quotation on page 34 from the opinion of the court below does not disclose that the court's observation was made with reference to the failure of El Isleo's master to have a pilot's license for the waters in which the collision occurred, and not with respect to the subject under consideration in this court (R. 284).

The reproduction of a chart attached to respondent's brief as appendix B, is not a copy of any exhibit in the case, and is needlessly confusing because it incompletely combines two exhibits, one showing the positions as marked by El Isleo's pilot and the other showing the positions indicated by the master of the Eastern Glade. Respondent's evident purpose is to make it appear, contrary to the finding below (R. 282), that the Eastern Glade did not stop her engines until after she had sounded her two-whistle signal. Thus position S, marked by her master as the point at which he stopped his engines (R. 149, Exhibit 9), is indicated as a later position than B-1, the place where El Isleo's pilot says the Eastern Glade was when she sounded her two blasts (R. 201). Respondent omits to show the position marked by the master of the Eastern Glade as the point at which he sounded two blasts, a position between S and Y, and does not mention that according to the Eastern Glade's bridge officers their two-blast signal was sounded a minute or two minutes *after* the Eastern Glade had stopped her engines (R. 148, 123).

Respectfully submitted,

JOHN C. CRAWLEY
EARLE FARWELL
For the Petitioner.

Appendix.

Ada, The Sappho, 1 Asp. M. C. 475. A case of collision between two steamers approaching a pilot station on crossing courses; there was no signal by either vessel.

The Albano, 1907 A. C. 193: There were no signals before one vessel sounded backing whistles *in extremis.*

The Ashbourne, (C. C. A. 2d) 181 Fed. 815 involved a collision between the respective tows of tugs meeting head and head, one failing to navigate in accordance with their timely exchange of one-blast signals.

In *The Ashley,* (C. C. A. 2d) 221 Fed. 423 the inspectors' rules applicable were those shown in the edition of May 1, 1912. Without discussion the court held that the preferred vessel could not be compelled to give way to a signal of two blasts, but "had a right to insist upon her privilege under the inland rules by answering with one".

Atlas Transportation Co. v. *Lee Line Steamers,* (C. C. A. 8th) 235 Fed. 492, involved an overtaking situation in the Mississippi River, after signals had been exchanged.

In *Belden v. Chase,* 150 U. S. 674, cited on page 24 of respondent's brief this court referred to the inspectors' rules as follows, at 698:

> "In addition to the rules for preventing collisions, prescribed by section 4233, it was provided by section 4412 that 'the board of supervising inspectors shall establish such regulations to be observed by all steam-vessels in passing each other, as they shall from time to time deem necessary for safety.' The rules laid down by the latter as thus authorized have the force of statutory enactment, and their construction, (when put in evidence as they were in this case,) as well as that of the rules under section 4233, is for the court, whose duty it is to apply them as matter of law upon the facts of a given case. They are not mere prudential regulations, but binding enactments, obligatory from the time that the necessity for precaution begins, and continuing so long as the means and opportunity to avoid the danger remains. *The Dexter,* 23 Wall. 69. Obviously they must be rigorously en-

forced in order to attain the object for which they were framed, which could not be secured if the masters of vessels were permitted to indulge their discretion in respect of obeying or departing from them."

The Blue Jacket, 144 U. S. 371, involved a collision between a sailing vessel and a steam tug. When the former changed her course the tug was *in extremis* and was excused for not reversing.

In *The Boston*, (C. C. A. 2d) 277 Fed. 36, the preferred vessel sounded a timely signal of one blast, and the burdened vessel, about 40 seconds before collision, and while approaching at top speed, crossed the other's signal with two blasts. The vessels were then *in extremis*.

In *The Boston Socony*, (C. C. A. 2d) 63 F. (2d) 246, "No signal was given by either vessel until just prior to collision, when each sounded an alarm and reversed. The collision could not then be averted * * *." (page 247, left.)

In *L. Boyers Sons Co.* v. *United States*, (C. C. A. 2d) 195 Fed. 490, it was found that on two occasions the privileged vessel had sounded a timely signal of one blast, the second of which was crossed by two blasts. Without specific reference to the inspectors' rules the court simply said that: "A privileged vessel is entitled to assume that, although the burdened vessel may at first propose to exchange rights of way, it will, if such proposal be rejected, conform to the rules of navigation." There was no discussion of the point here involved.

In *The Breakwater*, 155 U. S. 252, the burdened vessel inexcusably failed to navigate in accordance with the timely passing agreement.

Of *The Britannia*, 153 U. S. 130, mentioned on page 11 of our original brief, Mr. Justice Brown wrote in *The Albert Dumois*, 177 U. S. 240, at 254:

"In the case of *The Britannia*, the decision of the court that of two crossing steamers the preferred vessel should have kept her course and speed, was

put upon the ground that the course of the Britannia, the obligated vessel, was precisely what might have been anticipated, and did not warrant the Beaconsfield, the preferred vessel, in disregarding the injunctions of the twenty-third rule, which required her to keep her course. It was intimated that a different conclusion might have been reached if it had appeared that the Britannia was herself violating a rule of navigation. Now, as it appears from the testimony of the Argo's crew that they not only heard the signal of two whistles from the Dumois, but saw her turn under her starboard wheel, and exhibit her green light when she should have ported, they were at once apprised of the fact that she was violating a rule of navigation, and that prompt action was required to avoid a collision."

The Chatham, (C. C. A. 4th) 52 Fed. 396, was a case of a collision between a steam vessel and a schooner.

The Chicago, (C. C. A. 2d) 125 Fed. 712, illustrates the point involved in the present case. The court there said:

> "We are of the opinion that it was not fault on the part of the Augusta to hold her course and speed so long as [the possibility of the Chicago's keeping out of the way] existed, *in the absence of some definite intimation by signal* or action that the Chicago was going to fail in her duty. That notification came in the two-blast whistle and the increase of speed. The Augusta did not hear the signal, but, apparently at the same time it was blown, stopped her engines." (Our italics.)

By that time the vessels were *in extremis.* Certain of the inspectors' rules in force at that time (1899) are quoted on page 714 of the report. They were not in their present form.

The City of Augusta, (C. C. A. 1st) 80 Fed. 297, was a case of collision between a steam vessel and a schooner.

In *The City of New York,* 147 U. S. 72, the asserted contributory fault on the part of a sailing vessel was a change of course made *in extremis.*

The Columbia, (C. C. A. 9th) 109 Fed. 660, was a case of collision between a ship and a barque, both in tow of a steam tug.

In *The Columbia,* (C. C. A. 2d) 205 Fed. 898, a ferryboat came out of her slip with such impetus as to strike a steamer making a landing at a pier a short distance above the ferry slip.

In *Commonwealth & Dominion Line Ltd.,* v. *United States,* (C. C. A. 2d) 20 F. (2d) 729, the trial court found that the privileged vessel had sounded four separate signals, each of one blast, to the last of which the burdened vessel answered with two blasts, and that through inattention on the part of the burdened vessel the presence of the privileged vessel had not been noted until too late. When the last mentioned signal was given it was at best problematical whether collision could have been avoided.

In *The Cranford,* (C. C. A. 2d), 27 F. (2d) 710, the privileged vessel sounded one blast, to which the burdened vessel answered with two; the privileged vessel sounded the alarm and one blast and kept on; the burdened vessel replied with two blasts and an alarm, at which the privileged vessel reversed only a minute before the collision. The inspectors' rules were not mentioned by the court.

In *The Cygnus,* (C. C. A. 2d) 142 Fed. 85, it was pointed out that the inspectors' prohibition of cross-signals, although then restricted to cases of vessels meeting end-on, had induced a belief among some pilots that by giving the first signal they could relieve themselves of the burden of keeping out of the way. There was no mention of any requirement by the supervising inspectors that both vessels stop.

The Delaware, 161 U. S. 459, was discussed on p. 10 of our original brief.

In *The Elizabeth* (C. C. A. 2d), 197 Fed. 160, the *privileged* vessel sounded a two-blast signal, which was not heard, and later a second two-blast signal which was heard by the burdened vessel, but which the latter did not answer. On the authority of *The Montauk,* discussed

below, p. 15, the court excused the burdened vessel for her failure to answer signals, and held the privileged vessel solely at fault.

In *The Flemington*, (C. C. A. 2d) 204 Fed. 980, it appears only that a tug was held at fault for backing from her berth into the tow of a passing tug.

In *The Florence*, (D. C.) 68 Fed. 940; affirmed without opinion (C. C. A. 2d) 89 Fed. 1015, a steamer leaving her berth was held solely at fault for collision with a hawser tow after the steamer had sounded two-blasts, which the towing tug did not hear, and after the tug had sounded one blast, which the steamer did not hear, followed by another two blasts from the steamer, to which the tug responded with a single blast not heard by the steamer.

Fort St. George (C. C. A. 2d) 27 F. (2d) 788. Collision between the Olympic, backing into the North River from her berth. No signals were sounded, and the Olympic was *in extremis* before she had warning that the other vessel would not keep out of the way.

In *The Fred B. Dalzell, Jr.*, (C. C. A. 2d) 45 F. (2d) 580, the privileged vessel sounded one blast, which the burdened vessel answered with two blasts; whereupon the privileged vessel sounded the alarm and reversed her engines. In holding the burdened vessel solely at fault, the court pointed out that her two-blast signal, notice that she was violating the starboard hand rule, was sounded too late to permit the privileged vessel to avoid collision.

The Fulton, 54 F. (2d) 467, is discussed in our original brief, p. 8.

The George S. Shultz, see *The Nereus, infra.*
The Greenpoint, see *The Nereus, infra.*

The Haida, (D. C.) 191 Fed. 623, affirmed on opinion below (C. C. A. 2d) 196 Fed. 1005, contains a discussion by Judge Learned Hand of the opinion in *The Montauk, infra*, p. 15. Judge Hand considered that so much of that

opinion as nullified the inspectors' requirement of an answering signal was obiter, but that the subject discussed was not open for him. He stated his understanding of the decision to be that the inspectors could not require a privileged vessel to answer a signal, let alone require her to sound one indicating her intention to hold her course and speed.

The Hallgrim-Havre Maru, (C. C. A. 2d) 20 F. (2d) 720, involved the International Rules, and the vessels had repeatedly exchanged two blast signals. One failed to navigate in accordance with them.

The Haven Belle, (C. C. A. 4th) 85 F. (2d) 939, it was held that the privileged vessel was not at fault for having mistaken the burdened vessel's two-blast signal, sounded in a gale, for a one-blast signal, which she answered with one blast. Excusing the failure properly to hear the two-blast signal, the court said that the master of the preferred vessel "had no other reason to think that the [burdened vessel] would attempt to cross her bow."

In *The John H. Starin,* (D. C.) 145 Fed. 723; (C. C. A. 2d) 162 Fed. 146, the collision occurred in 1905. Although the inspectors' rules had been amended in 1899, they were substantially in the same form as those considered in *The John King, infra.* There was no prohibition of cross-signals except in cases of vessels meeting end-on. The only point argued or discussed with respect to the rules was whether they undertook to require the privileged vessel to *assent* to a two-blast proposal.

It is evident from the opinion in *The John King,* (C. C. A. 2d) 49 Fed. 469, that the inspectors' rules applicable to that case (1888) were regarded as requiring the privileged vessel to *assent* to a two-blast signal, and so to be in conflict with what was then Rule 23 of R. S. § 4233. There was no mention of the consideration that underlies the inspectors' rules in their present form, which do not purport to require assent but simply require that the rejection shall be accomplished by sounding the alarm signal and stopping instead of crossing the signal and going on.

The bare facts of that case are a striking illustration of the practicability of the present rules.

In *The Lexington*, (C. C. A. 2d), 275 Fed. 279, study of the opinion discloses that the vessels were *in extremis* when the burdened vessel sounded the first signal of two blasts, at which the privileged vessel sounded two blasts and reversed.

The Maggie J. Smith, 123 U. S. 349, had reference to a situation of extreme danger brought about solely by the fault of one vessel; the other, having been blameless theretofore, was not held at fault for an error *in extremis*.

The Manx Admiral, 60 Ll. L.L.R. 11, there was no signal until the preferred vessel sounded one blast *in extremis*.

In *The Montauk* (C. C. A. 2d), 180 Fed. 697, the applicable rules (page 698) were those in force on April 22, 1907; they were not in their present form, but the court's construction of them was, to say the least, not the only construction of which they would seem to have been susceptible. The court said, however, that since the statutory rules prescribed only that answering signals must be sounded by vessels in head-and-head situations, the inspectors were powerless to require the privileged vessel to answer any signal in a crossing situation. Having interpreted the inspectors' provision for signals as being inapplicable to the privileged vessel in a crossing situation, the court concluded that the inspectors intended that the privileged vessel, on receiving an "injudicious" two-blast proposal, should, if the vessels had approached within half a mile of each other, slow to bare steerage way *without sounding any signal at all*. There was, we submit, no occasion for so interpreting the inspectors' rules in force at that time, but even if the court was correct in its interpretation of those rules it does not follow that the present rules also should be condemned.

Minnesota S. S. Co. v. *Lehigh Valley Trans. Co.*, (C. C. A. 6th), 129 Fed. 22, was a case of one vessel meeting two others that were running abreast.

The Munrio, (N. D. Cal.) 11 F. (2d) 900, was a case of collision at sea in fog. A vessel was held solely at fault for immoderate speed and for failing to stop her engines on hearing the first fog signal, seventeen minutes before the other vessel hove in sight.

The Nacoochee, 137 U. S. 330, was a collision in fog between a schooner and a steamer, the latter being held solely at fault for immoderate speed. The schooner was exonerated, in respect of an asserted error *in extremis.*

The Nereus, (D. C.) 23 Fed. 448, and *The Greenpoint,* (D. C.) 31 Fed. 231, the former characterized by the respondent as a "leading case," have been modified if not overruled on the point discussed in the quotations appearing in respondent's brief, pp. 13 and 16. The old notion, indicated by those quotations, that the privileged vessel should maintain her course and speed after assenting to a two-blast proposal, was overthrown in *The George S. Shultz,* (C. C. A. 2d) 84 Fed. 508. In *The Newburg,* (C. C. A. 2d) 273 Fed. 436, it was distinctly held that no matter which vessel made the proposal, "The situation, at least in this circuit, after the agreement, is one of special circumstances."

The New York, 175 U. S. 187, at page 205:

> "But the fact, that a steamer is entitled to hold her course does not excuse her from inattention to signals, from answering where an answer is required, or from adopting such precautions as may be necessary to prevent a collision, in case there be a distinct indication that the obligated steamer is about to fail in her duty. As was said in the case of *The Sunnyside,* 91 U. S. 208, 222: 'Cases arise in navigation where a stubborn adherence to a general rule is a culpable fault, for the reason that every navigator ought to know that rules of navigation are ordained not to promote collisions, but to save life and property by preventing such disasters.' "

Nordpol-Condor, (C.C.A. 2d), 84 F. (2d) 3, involved navigation under the International Rules, off the coast of South America.

"Immediately prior to the collision, the [burdened vessel], without warning or signal, suddenly turned to the westward and veered sharply across the course of the [privileged vessel]."

The latter reversed, but the vessels were already *in extremis*.

The Norfolk, (D. C. Md.) 297 Fed. 251, embodies the thought that rule II of the inspectors, should be construed as forbidding a cross-signal only where the vessel first signaling has indicated her purpose to comply with the rules (page 255). Both vessels were held at fault, the privileged vessel for stopping her engines *contrary* to her cross-signal.

The Oregon, 158 U. S. 186, was a case of collision between a steamer and a anchored vessel, the latter guilty of no breach of regulations. "It was a case of action *in extremis* • • • and the judgment of a competent sailor *in extremis* cannot be impugned." (page 204.)

The Pacific, (C. C. A. 3rd) 154 Fed. 943, was a case of collision between a steamer and an anchored dredge to which a tug was attached.

The Pawnee, (S.D.N.Y.) 168 Fed. 371, contains an interesting historical resumé by Judge Adams, who had been the proctor for the successful appellant in the case of *The John King*, (C.C.A. 2d), 49 Fed. 469, 470, and after his appointment to the bench had decided the case of *The John H. Starin*, 145 Fed. 723, affirmed, (C.C.A. 2d), 162 Fed. 146. Judge Adams' discussion shows that the old rules of the supervising inspectors were regarded in the second circuit as requiring the privileged vessel to give up her right of way upon the demand of the burdened vessel. With some hesitation Judge Adams concluded that Rule IX, approved February 25, 1907, was subject to the same objection, and in conflict with the statutory rule, although the facts disclose that the point was not actually involved: the preferred vessel gave the first signal, of one blast; later the burdened vessel blew a signal of two blasts,

whereupon the preferred vessel immediately stopped and reversed, in the jaws of collision.

The Persian, (C.C.A. 2d) 224 Fed. 441, was a case of collision in dense fog and the asserted contributory fault of one vessel was held an error *in extremis*.

The Piankatank, (C.C.A. 4th) 87 F. (2d) 806, involved a collision between a vessel that had backed out of her slip and started full speed ahead while another backed out of a neighboring slip with the intention of proceeding astern across the course of the first. The opinion recites: "Both vessels were parked bow in." (p. 807, right.)

In *The Pocomoke*, (E. D. Va.) 150 Fed. 193, there were no signals by either vessel, and the privileged vessel had no indication of danger until collision became inevitable.

The Ponce, (E. D. N. Y.) 116 Fed. 55, was a case of collision between passenger vessels at a yacht race, one vessel being at rest.

Reading Co. v. *Sabine Transportation Co.*, (C. C. A. 3rd) 91 F. (2d) 112. The decision was not that inspectors' present rule III is invalid, but that, as the court said:

> "We think that rule III applies and is intended to apply only where vessels are in a position of danger in respect to one another, and we so hold."

In the present case it is unnecessary to consider the correctness of that decision.

The San Simeon, (C. C. A. 2d) 63 F. (2d) 798, and *Merritt, Chapman & Scott Corporation* v. *Texas Co.*, et al., (C. C. A. 2d) 98 F. (2d) 719, are cited on page 38 of the respondent's brief upon the interpretation of Article 18, Rule III, prescribing the danger signal.

In the last mentioned case the court said of the statutory signal, page 721,

> "But it has been universally interpreted as applying to cases where the master believes that safety requires a change of navigation, and by far the greater number of occasions of its use are just of that sort."

In *The Scranton*, (C. C. A. 2d), 221 Fed. 609, the principal question considered was whether there had been, as the burdened vessel contended, a two-blast passing agreement. It was found that there was no agreement and that the vessels were *in extremis* before the privileged vessel received an indication that the other would not keep out of the way.

The Thielbek, (C. C. A. 9th) 241 Fed. 209, involved a collision between a steamer and a bark in tow of a tug. The steamer after two-blast passing signals had been exchanged, failed to navigate in accordance with the agreement but reversed her engines, without signalling, and rendered collision unavoidable.

In *The Transfer No. 15*, (C. C. A. 2d) 145 Fed. 503, the inspectors' prohibition of cross-signals was that contained in what was then Rule III, as amended January 25, 1899, and by its terms was restricted to vessels approaching from opposite directions and did not cover vessels on crossing courses. Such discussion as there was of the subject indicates only that the court considered it beyond the power of the supervising inspectors to require the privileged vessel to *assent* to a two-blast proposal.

The Umbria, 166 U. S. 404, was a case of collision in fog. A majority of this court concluded that one vessel was not at fault, and the other members of this court concluded that if fault existed it did not contribute to the collision.

The Victory & The Plymothian, 168 U. S. 410, was a head and head situation, in which, however, it appears that *The Plymothian* immediately reversed on hearing a two-blast signal and sounded danger signals (p. 422).

In *The West Point*, (C. C. A. 2d) 85 F. (2d) 63, the privileged vessel sounded one-blast signals and maintained her course and speed. The burdened vessel "at no time sounded any signals except an alarm, blown just as the collision occurred".

Wilson v. *Pacific Steamship Company*, 276 U. S. 454, was discussed on p. 11 of our original brief. It may be mentioned that the "note" appended to Article 21 of the international rules, considered in that case, was added by the Act of May 28, 1894, ch. 83, (33 U. S. Code § 106), and that it was not made a part of Article 21 of the inland rules adopted in 1897 (33 U. S. Code § 206).

FILE COPY

Office - Supreme Court, U. S.
FILED
JUN 28 1939
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. [redacted] 73-74

POSTAL STEAMSHIP CORPORATION,
Petitioner,

vs.

STEAMSHIP EL ISLEO,
SOUTHERN PACIFIC COMPANY, CLAIMANT,
Respondent.

POSTAL STEAMSHIP CORPORATION;
Petitioner,

vs.

SOUTHERN PACIFIC COMPANY,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CHAUNCEY I. CLARK,
BURTON H. WHITE,
Counsel for Respondent,
Southern Pacific Company.

Post Printing Company, Inc., 80 Lafayette Street, New York, N. Y.

SUBJECT INDEX

PAGE

Statement 1

Facts 2

There is no question of law involved..... 3

POINTS

I. The District Court and Circuit Court of Appeals were right in holding it to be a crossing situation under Articles 19 and 22 of the Inland Rules of Navigation 5

II. *El Isleo* was justified in keeping her course and speed..... 6

III. There was no fault on the part of *El Isleo* in refusing the *Eastern Glade* permission to cross *El Isleo's* bow... 7

IV. *El Isleo's* navigators acted with reasonable prudence and skill under the circumstances 12

The petition for certiorari should be denied..... 13

TABLE OF CASES CITED

	PAGE
Ashley, The, 221 Fed. 423 (C. C. A. 2)	9
Boston, The, 277 Fed. 36 (C. C. A. 2)	7
Boston Socony, The, 63 F. (2d) 246 (C. C. A. 2)	7, 10
Boyers, L., & Sons *v.* U. S., 195 Fed. 490 (C. C. A. 2)	9
Breakwater, The, 155 U. S. 252	12
Chicago, The, 125 Fed. 712 (C. C. A. 2)	9
Cygnus, The, 142 Fed. 85 (C. C. A. 2)	9
Delaware, The, 161 U. S. 459	7, 11
Edward S. Atwood, The, 1925 A. M. C. 439 (E. D. N. Y.)	9
Elizabeth, The, 197 Fed. 160 (C. C. A. 2)	7
Florence, The, 68 Fed. 940; affirmed, 89 Fed. 1015 (C. C. A. 2)	7
Fulton, The, 54 F. (2d) 667 (C. C. A. 2)	10
George S. Schultz, The, 84 Fed. 508 (C. C. A. 2)	9, 11
Haida, The, 191 Fed. 623; affirmed, 196 Fed. 1005 (C. C. A. 2)	7, 9
Hallgrim, The-Havre Maru, 20 F. (2d) 720 (C. C. A. 2)	13
Haven, The-Bernardsville, 1925 A. M. C. 204 (S. D. N. Y.)	9
John H. Starin, The, 162 Fed. 146 (C. C. A. 2)	9
John King, The, 49 Fed. 469 (C. C. A. 2)	9
Manx Admiral, The, 60 Lloyds List Law Reports 11	13
Montauk, The, 180 Fed. 697 (C. C. A. 2)	9
Nanuet, The-Poling Bros. No. 1, 1931 A. M. C. 1598 (E. D. N. Y.)	13
Newport, The, 2 F. (2d) 255 (S. D. Cal.)	7
Nordpol, The-Condor, 84 F. (2d) 3 (C. C. A. 2)	13
Norfolk, The, 297 Fed. 251 (D. Md.)	9
Pawnee, The, 168 Fed. 371 (S. D. N. Y.)	9, 10

	PAGE
Piankatank, The, 87 F. (2d) 806 (C. C. A. 4)...	7
Scranton, The, 221 Fed. 609 (C. C. A. 2).....	9
Umbria, The, 166 U. S. 404.....	13
Victory, The, and The Plymothian, 168 U. S. 410	6
West Point, The, 85 F. (2d) 63 (C. C. A. 2).....	7, 9
Yamashita Kisen Kabushiki Kaisha *v.* McCormick Inter. S. S. Co., 20 F. (2d) 25 (C. C. A. 9)...	9

TABLE OF STATUTES CITED

Inland Rules of Navigation, Articles 19, 21, 22.....	5
Supervising Inspectors' Rule VII.....	8

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No.

POSTAL STEAMSHIP CORPORATION,
Petitioner,

vs.

Steamship EL ISLEO,
SOUTHERN PACIFIC COMPANY, Claimant,
Respondent.

POSTAL STEAMSHIP CORPORATION,
Petitioner,

vs.

SOUTHERN PACIFIC COMPANY,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Statement

The petition is filed to review a decision of the Second Circuit Court of Appeals, affirming a final decree of the District Court for the Southern District of New York dismissing petitioner's libel, and affirming an interlocutory decree in favor of Southern Pacific Company, owner of steamship *El Isleo*, against the steamship *Eastern*

Glade. Both suits were to recover for damages resulting from a collision which occurred near the junction of Curtis Bay and Fort McHenry Channels in the approach to Baltimore Harbor in the late afternoon of December 19, 1935.

Facts

At about five P. M. on the evening of December 19, 1935, *El Isleo* left Sparrows Point Terminal, Baltimor bound for Ruckerts Terminal. As *El Isleo* proceeded up Fort McHenry Channel, when approximately abreast of Fort Carroll, the green side light of the *Eastern Glade* was sighted, about two miles away, on the port bow. The *Eastern Glade* was then proceeding down Curtis Bay Channel toward Fort McHenry Channel. In this situation the vessels were approaching on crossing courses. The *Eastern Glade* sounded a two-blast passing signal indicating an intention to continue on out of Curtis Bay Channel into Fort McHenry Channel, and across *El Isleo's* bow. *El Isleo* promptly answered with four blasts, followed immediately by one blast, indicating she intended to continue on up the Channel, and that the *Eastern Glade* should hold back and not attempt to emerge into Fort McHenry Channel until *El Isleo* had passed. However, the *Eastern Glade*, disregarding *El Isleo's* whistle signals, continued on, passed out of Curtis Bay Channel and into Fort McHenry Channel. As there was danger of collision, *El Isleo* put her rudder hard right and swung out of the channel on her own right side thereof. The *Eastern Glade* crossed Fort McHenry Channel and, continuing on, brought her bow into collision with *El Isleo* about amidships on the latter's port side (R. 36-9, 43, 67-8, 201-3, 265-9).

In the District Court petitioner contended that the collision occurred on the westerly side of Fort McHenry Channel, but both Courts below found that the collision occurred, as testified to by *El Isleo's* witnesses, outside of and to eastward of the channel (R. 39-41, 272-4, 360, 384).

The master of petitioner's vessel (*Eastern Glade*) admitted that he never intended the *Eastern Glade* to leave Curtis Bay Channel, and that the entrance of his vessel into Fort McHenry Channel was due to a "miscalculation" on his part (R. 227-8).

Petitioner does not seek exoneration of its own vessel. Indeed, petitioner admits the *Eastern Glade's* fault in failing to remain in Curtis Bay Channel, as her master concededly intended to do, until *El Isleo* had passed (Petition, 3).

There is no question of law involved

Petitioner bases its petition on a criticism of the decision of the Circuit Court of Appeals in approving the action of the privileged vessel (*El Isleo*) in a crossing situation, responding to the proposal of the burdened vessel (*Eastern Glade*) with an alarm signal, followed by a one-blast passing signal to indicate the refusal of the privileged vessel to yield the right of way to the burdened vessel.

Petitioner contends in effect that the privileged vessel is not privileged, and that although required to keep her course and speed in a crossing situation, the privileged vessel has no right to refuse to yield the right of way to the burdened vessel which sounds two blasts. There really is no question as to this once the facts have been established, which is the case here.

Although it was at first contended by petitioner (in the District Court) that the collision occurred in an entirely

different place than that found by the District Court and Circuit Court of Appeals, to wit: on the westerly side of the channel, and that *El Isleo* was at fault for being on her wrong side of the channel, this position was later abandoned and it was contended, as in this Court, that admitting the fault of petitioner's vessel for the collision, *El Isleo* was also at fault because she did not stop after sounding her danger signal, instead of going out of the channel in order to get out of the way of the *Eastern Glade*, which was clearly at fault for her navigation. Both Courts below resolved this against petitioner in accordance with the rules of navigation and the authorities interpreting those rules (R. 386).

Petitioner now attempts to upset the well established rule that in a crossing situation the privileged vessel (*El Isleo* here) not only may, but must hold her course and speed until it becomes evident that the burdened vessel either cannot, or will not, keep out of the way of the privileged vessel. As the Circuit Court of Appeals said:

"So viewed no fault appears in the navigation of *El Isleo*, the privileged vessel. To the two blast signal of the *Eastern Glade* Captain Korn responded with an alarm followed by one blast to indicate his refusal to yield his right of way. In *The Fulton*, 54 F. (2d) 467 we discussed the rule established in this circuit that in a crossing situation the privileged vessel may 'cross' the signal of the burdened vessel and hold her course and speed until it becomes evident that the burdened vessel either cannot or will not keep out of the way. Although the rule was criticized, we think it too firmly established to be departed from until the Supreme Court speaks. We still adhere to that view" (Opinion, R. 386).

We are not briefing the fault of petitioner's ship (*Eastern Glade*) the fault of that vessel being conceded (Petition, 4).

POINTS

I. The District Court and Circuit Court of Appeals were right in holding it to be a crossing situation under Articles 19, 21 and 22 of the Inland Rules of Navigation.*

In both Courts below petitioner contended that it was a case of special circumstances, and this has been petitioner's chief reliance throughout the case in its attempt to hold *El Isleo* partly at fault. Both Courts below pointed out that the contention was unfounded and that the cases relied upon did not sustain petitioner (R. 385).**

All agree that as *El Isleo* was proceeding up Fort McHenry Channel and *Eastern Glade* was proceeding down Curtis Bay Channel the *Eastern Glade* was showing *El Isleo* her green light only and *El Isleo* was showing *Eastern Glade* her red light only of her side lights (R. 43, 202-3; 265, 267).

Each was on a definite course and their courses were crossing so that *Eastern Glade* had *El Isleo* "on her own starboard side". In this situation, before any signals were sounded, the *Eastern Glade's* intended course was unknown to those on *El Isleo*. Only her apparent course was known to *El Isleo's* navigators, which was down Curtis Bay Channel toward the intersection of that channel with Fort McHenry Channel. The navigators of the *Eastern Glade* might have been intending to turn to the right and go down Fort McHenry Channel, or they might have

* Article 19. "When two steam vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other" (33 U. S. C. § 204).

Article 21. "Where, by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed" (33 U. S. C. § 206).

Article 22. "Every vessel which is directed by these rules to keep out of the way of another vessel shall if the circumstances of the case admit, avoid crossing ahead of the other" (33 U. S. C. § 207).

** This contention is now abandoned by petitioner.

been intending to cross Fort McHenry Channel and go to an anchorage on the easterly side of the channel, or they might have been intending to turn to the left and go up the channel in the same direction as *El Isleo*. The first of these possibilities; viz., turning to the right to go down Fort McHenry Channel, was eliminated by the *Eastern Glade's* two-blast signal, which meant to those aboard *El Isleo* that the *Eastern Glade* proposed to cross *El Isleo's* bow (R. 37, 52, 292). Indeed, the *Eastern Glade's* master admitted that his two-blast signal meant that he was going to cross *El Isleo's* bow (R. 229).

And the *Eastern Glade's* chief officer admitted that it was a crossing situation and that the *Eastern Glade* was bound to keep out of *El Isleo's* way. To use his own words, the *Eastern Glade* was required to "keep clear" of *El Isleo* (R. 113).

II. El Isleo was justified in keeping her course and speed.

In a crossing situation it is well established that it is not only the privilege and the right, but the *duty* of the privileged vessel (*El Isleo* was the privileged vessel) to keep her course and speed until a departure from the rules became necessary to avoid immediate danger. She could not stop or stop and reverse her engines because she would thereby be speculating upon what the burdened vessel would do. *El Isleo's* navigators were entitled to assume that the *Eastern Glade* would act lawfully and not fail in her duty to stop and reverse. *The Victory* and *The Plymothian*, 168 U. S. 410, 426.

If *El Isleo* were at liberty to speculate upon the possibility of the *Eastern Glade* failing to do her duty, the

certainty that the privileged vessel will hold her course (upon which the burdened vessel has a right to rely) and which it is the very object of the rules to insure, would give place to doubts on the part of the master of the burdened vessel and produce timidity and feebleness of action on the part of both which would bring about more collisions than it would prevent. *The Delaware,* 161 U. S. 459, 469; *The Boston,* 277 Fed. 36, 40 (C. C. A. 2); *The West Point,* 85 F. (2d) 63, 65 (C. C. A. 2); *The Piankatank,* 87 F. (2d) 806, 810 (C. C. A. 4); *The Boston Socony,* 63 F. (2d) 246 (C. C. A. 2); *The Elizabeth,* 197 Fed. 160 (C. C. A. 2); *The Florence,* 68 Fed. 940; affirmed, 89 Fed. 1015 (C. C. A. 2); *The Haida,* 191 Fed. 623; affirmed, 196 Fed. 1005 (C. C. A. 2); *The Newport,* 2 F. (2d) 255 (S. D. Cal.).

III. There was no fault on the part of El Isleo in refusing the Eastern Glade Permission to cross El Isleo's bow.

Petitioner's request for certiorari is premised almost entirely on the alleged failure of *El Isleo* to comply with Supervising Inspectors' Rules II and VII, which are inapplicable to the situation here. Indeed, this argument has not heretofore been a part of its case; it was not included in petitioner's allegations of fault in the pleadings (R. 4); nor was it argued or briefed in either of the Courts below.

The Congress has specifically provided by Rules 19, 21 and 22 of the Inland Rules of Navigation referred to above under Point I (this brief, p. 5) that when two vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other, and the privileged

vessel should maintain her course and speed. The applicable Inspectors Rule (Rule VII) confirms this provision, providing that in crossing situations:

"the steam vessel which has the other on her port side shall *hold her course and speed;* and the steam vessel which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed or stop and reverse."

This rule deals specifically with the conduct of vessels in crossing situations and the signals to be given by them.

El Isleo's answer to the *Eastern Glade's* two-blast signal was a signal of four blasts, followed immediately by one blast, indicating her intention to "hold her course and speed" (R. 37, 268). The *Eastern Glade* replied with four blasts and one blast (R. 39, 269).* This meant that irrespective of the original signal, an agreement had been reached whereby the *Eastern Glade* would hold back and grant to *El Isleo* the privilege to which she was entitled, and it was in accordance with what the *Eastern Glade's* master testified he actually intended to do, to wit: remain in the channel (R. 228). Indeed, there is no claim that the *Eastern Glade* was in any way misled by *El Isleo's* signal. Nor can it be said that the collision in any way resulted from her so-called cross signal. On the contrary, the collision was due solely to the failure of the *Eastern Glade* to remain in Curtis Bay Channel, as she was required to do by the Navigation Rules. Any discussion of cross signals is of academic interest only.

It has been held again and again that when a vessel has no right to pursue a particular course without receiving the consent of the other vessel, the whistles which

* Her witnesses testified to three blasts.

she uses to obtain that assent are mere invitations to an agreement, contrary to the usual passing. The fact of signalling does not give the burdened vessel any special privilege, impose on the other vessel any special burden or reverse the normally applicable rules. The burden cannot be shifted from the burdened to the privileged vessel without her consent. *The West Point,* 85 F. (2d) 63 (C. C. A. 2); *Yamashita Kisen Kabushiki Kaisha* v. *McCormick Inter. S.S. Co.,* 20 F. (2d) 25 (C. C. A. 9); *The Ashley,* 221 Fed. 423 (C. C. A. 2); *The Scranton,* 221 Fed. 609 (C. C. A. 2); *The Haida,* 191 Fed. 623, affirmed 196 Fed. 1005 (C. C. A. 2); *The Montauk,* 180 Fed. 697 (C. C. A. 2); *The Pawnee,* 168 Fed. 371 (S. D. N. Y.); *The John H. Starin,* 162 Fed. 146 (C. C. A. 2); *The Cygnus,* 142 Fed. 85 (C. C. A. 2); *The Chicago,* 125 Fed. 712 (C. C. A. 2); *The George S. Shultz,* 84 Fed. 508 (C. C. A. 2); *The John King,* 49 Fed. 469 (C. C. A. 2); *The Edward S. Atwood,* 1925 A. M. C. 439 (E. D. N. Y.); *The Haven-Bernardsville,* 1925 A. M. C. 204 (S. D. N. Y.).

There is and can be no violation of the statutory rule in a vessel's giving a "cross signal" when the steamer first signalling has indicated an unauthorized manoeuvre or departure from the rules. *The Norfolk,* 297 Fed. 251 (D. Md.). In other words, the privileged vessel is entitled to assume that although the burdened vessel may first propose to exchange rights of way, it will, if such proposal be rejected, conform to the rules of navigation. *L. Boyers & Sons* v. *U. S.,* 195 Fed. 490 (C. C. A. 2).

Petitioner's contention amounts to a claim that Inspectors Rule 2 modifies the Navigation Rules imposing upon the privileged vessel the affirmative duty of "keeping her course and speed" (Rule 21, U. S. C., Title 33,

Section 206). That such was not the intention of the Inspectors Rules is indicated by the first part of Rule VII, dealing with crossing situations wherein the obligation of the privileged vessel to retain her course and speed is affirmed. The Inspectors could not have ruled otherwise, for no administrative body has any authority to repeal or modify any statute enacted by Congress. *The Pawnee*, 168 Fed. 371 (S. D. N. Y.).

The Fulton, 54 F. (2d) 667 (C. C. A. 2), relied upon by petitioner (Petition, pp. 4, 5, 7), did not involve a crossing situation, as in the instant case; it was a meeting or head-on situation where there is no privilege such as there is in a crossing situation, and there is for that reason a real basis for applying the Inspectors cross signal rule. As the Court there clearly stated:

"In a number of decisions involving crossing situations we have exonerated a vessel which pressed her statutory privilege by crossing the signal and holding her course and speed. * * * Our reasoning has been, that, as the statute (Inland Rules) article 21 (33 U. S. C. A. § 206), puts a duty upon the privileged ship to keep her course and speed, no rule can be valid which affects to relieve her of it, and that she may announce her determination to insist by crossing the first signal. The doctrine has been too long and too repeatedly established to allow any question now, but it is plain that the inspectors have never assented to it", (p. 468).

Also in *The Boston Socony*, 63 F. (2d) 246 (C. C. A. 2), the Court said:

"Rule 3 of the Supervising Inspectors Rules is relied upon as imposing a duty to signal; but in our opinion that rule cannot be construed as applying to vessels on crossing courses. Whether it would be valid if it were so construed, we need not say" (p. 248).

In *The Delaware*, 161 U. S. 459, this Court said of an alleged conflict between the Inspectors Rules and the International Rules:

"In this connection, the Talisman was charged with a violation of the Supervising Inspectors' rules, in not porting her helm and directing her course to starboard after sounding her first signal. These rules, however, so far as they require the whistle to be used, are applicable rather to vessels meeting end on or nearly end on, and the signals therein provided for are designed to apprise the approaching vessel of the intention of the steamer giving the signal, to port or starboard, as the case may be. As applied to vessels upon crossing courses, however, it means, when a single blast is given by the preferred steamer, nothing more than that she intends to comply with her legal obligation to keep her course, and throw upon the other steamer the duty of avoiding her. Such was evidently the view taken by both parties in this case, as there is not the slightest evidence that the pilot of the Delaware was misled by these signals, nor is a failure to port charged in the answer, or suggested in the testimony, as a fault on the part of the Talisman. These rules, so far as they require whistles to be used, ought to be construed in harmony with the International Code. If they were so construed as to require the preferred vessel to port, after having blown a blast of her whistle, it would involve a violation of article 23, which requires her to keep her course. On the other hand, if they be construed as applying chiefly to steamers meeting end on, or nearly end on, under Rule 18, they would frequently aid in solving any doubt with regard to the proposed course of the vessel giving the signal, and thus enable the meeting vessel to govern her own course accordingly. Certainly the rules should not be construed to require the steamer giving the signal to violate a plain statutory rule of navigation" (pp. 466-7).

The rule of Articles 19, 21 and 22 is of ancient origin, and its application is the very A. B. C. of practical navigation. *The George S. Shultz*, 84 Fed. 508 (C. C. A. 2). Any judicial refinement would not only slow up and interfere with normal traffic, but would also constitute a real

menace to navigation. This Court said with reference to Rule 19 in *The Breakwater*, 155 U. S. 252:

"Where rules of this description are adopted for the guidance of seamen who are unlearned in the law and unaccustomed to nice distinctions, exceptions should be admitted with great caution, and only when imperatively required by the special circumstances mentioned in rule 24, which may exist in any particular case rendering a departure from them necessary in order to avoid immediate danger. The moment the observance or non-observance of a rule becomes a matter of doubt or discretion, there is manifest danger, for the judgment of one pilot may lead him to observe the rule, while that of the other may lead him to disregard it." (264).

This is not an instance of a blind following of judicial precedent in the face of changed conditions or a change in the public viewpoint. There is no particular moral significance in giving the privilege to the vessel having another on her port bow but it is important to have definite, well understood traffic rules at sea as well as ashore. If these rules are to accomplish their purpose rather than to add to confusion, they must be strictly enforced, as the Courts have enforced them in the past.

IV. El Isleo's navigators acted with reasonable prudence and skill under the circumstances.

Petitioner complains because *El Isleo* did not stop and back instead of swinging to starboard out of the channel in order to avoid collision (Petition, 2-3).

Both Courts below found that she was justified in choosing the course she did (R. 386). Of course, as in all collision cases where one vessel is privileged, as *El Isleo* was in the instant case, the time came when those aboard *El Isleo* were presented with two alternatives to avoid collision, viz., she could either stop and reverse or swing

to starboard out of the channel. *El Isleo* chose the latter alternative (R. 40, 49, 297). The propriety of *El Isleo* swinging hard right to avoid collision is hardly open to question. See *The Nordpol-Condor*, 84 F. (2d) 3 (C. C. A. 2). Indeed the *Eastern Glade's* master admitted that this was "just the right thing" to do (R. 234). And both Courts below found that *El Isleo* acted prudently under the circumstances (R. 386).

Having chosen this alternative (*i.e.*, to swing out of the channel under a right rudder) the greater her speed and the faster and farther she could get away from the *Eastern Glade*, which was coming into the channel from the opposite side, the better, and thus avoid the risk of collision and increase the possibility of avoiding it. Indeed, it was clear to *El Isleo's* master that he could have gained nothing by stopping as there was danger of sinking his ship by so doing (R. 42, 57). The manoeuvre adopted by *El Isleo* was in accordance with the rule prescribed by Admiral Knight for the avoidance of collision (Knight on Marine Seamanship, 9th Ed., p. 476). See *The Umbria*, 166 U. S. 404, 419; *The Hallgrim-Havre Maru*, 20 F. (2d) 720, 723 (C. C. A. 2); *The Nanuet-Poling Bros. No. 1*, 1931 A. M. C. 1598 (E. D. N. Y.); *The Manx Admiral*, 60 Lloyds List Law Reports 11.

The petition for certiorari should be denied.

Respectfully submitted,

CHAUNCEY I. CLARK,
BURTON H. WHITE,
Counsel for Respondent,
Southern Pacific Company.

Dated, New York, June 21, 1939.

Office - Supreme Court, U. S.
FILED
NOV 16 1939
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—NOS. 73 AND 74

POSTAL STEAMSHIP CORPORATION, OWNER OF STEAMSHIP EASTERN GLADE,

Petitioner,

vs.

STEAMSHIP EL ISLEO, SOUTHERN PACIFIC COMPANY,

Respondent.

POSTAL STEAMSHIP CORPORATION,

Petitioner,

vs.

SOUTHERN PACIFIC COMPANY,

Respondent.

BRIEF FOR SOUTHERN PACIFIC COMPANY, RESPONDENT

CHAUNCEY I. CLARK,
BURTON H. WHITE,
Counsel for SOUTHERN PACIFIC COMPANY, *Respondent.*

BURLINGHAM, VEEDER, CLARK & HUPPER,
27 William Street,
New York City.

Post Printing Company, Inc., 80 Lafayette Street, New York, N. Y.

SUBJECT INDEX

	PAGE
Statement	1
Facts	2
Opinions below	6
POINTS:	
I. The collision was due to the "miscalculation" of the master of petitioner's vessel (*Eastern Glade*) in emerging from Curtis Bay Channel contrary to his intention	6
II. The rules governing this collision are contained in Articles 19, 21, 22 and 23 of the Inland Rules of Navigation	10
III. The two-blast whistle signal by petitioner's vessel (burdened) gave her no additional right. It was merely a proposal by the burdened vessel to cross the privileged vessel's bow which proposal was rejected by the privileged vessel	13
IV. Respondent's vessel (*El Isleo*) was justified in refusing to yield her right of way and sounding a one-blast signal	17
V. Respondent's vessel (*El Isleo*) was required under the Navigation Rules (Article 19) to keep her course and speed	24
VI. *El Isleo's* navigators acted with reasonable prudence and skill under the circumstances	29
VII. If there were any errors in *El Isleo's* navigation such were errors *in extremis* for which she is not liable	32

PAGE

VIII. The faults of the *Eastern Glade* are so patent and so fully account for the collision that any doubt as to *El Isleo's* navigation should be resolved in her favor..... 34

IX. The decrees below should be affirmed..... 35

Appendix A—Inland Rules of Navigation..... 36

International Rules 39

Supervising Inspectors' Rules..... 40

TABLE OF CASES CITED

	PAGE
Ada, The-Sappho, 1 Asp. M. C. 475	15
Albano, The, 1907 A. C. 193	13
Ashbourne, The, 181 Fed. 815 (C. C. A. 2)	35
Ashley, The, 221 Fed. 423 (C. C. A. 2)	22
Atlas Transp. Co. *v.* Lee Line Steamers, 235 Fed. 492 (C. C. A. 8)	33
Belden *v.* Chase, 150 U. S. 674	24
Blue Jacket, The, 144 U. S. 371	33
Boston, The, 277 Fed. 36 (C. C. A. 2)	26
Boston Socony, The, 63 F. (2d) 246 (C. C. A. 2)	12, 23
Boyers, L., & Sons *v.* U. S., 195 Fed. 490 (C. C. A. 2)	22
Breakwater, The, 155 U. S. 252	13, 15, 23
Britannia, The, 153 U. S. 130	27
Chatham, The, 52 Fed. 396 (C. C. A. 4)	33
Chicago, The, 125 Fed. 712 (C. C. A. 2)	22
City of Augusta, The, 80 Fed. 297 (C. C. A. 1)	33
City of New York, The, 147 U. S. 72	34
Columbia, The, 109 Fed. 660 (C. C. A. 9)	33
Columbia, The, 205 Fed. 898 (C. C. A. 2)	10
Commonwealth & Dominion Line *v.* U. S., 20 F. (2d) 729 (C. C. A. 2)	15
Cranford, The, 27 F. (2d) 710 (C. C. A. 2)	34
Cygnus, The, 142 Fed. 85 (C. C. A. 2)	22
Delaware, The, 161 U. S. 459	18, 21, 25
Elizabeth, The, 197 Fed. 160 (C. C. A. 2)	27
Flemington, The, 204 Fed. 980 (C. C. A. 2)	10
Florence, The, 68 Fed. 940; affirmed, 89 Fed. 1015 (C. C. A. 2)	27
Fort St. George, The, 27 F. (2d) 788 (C. C. A. 2)	35
Fred B. Dalzell, Jr., The, 45 F. (2d) 580 (C. C. A. 2)	16
Fulton, The, 54 F. (2d) 467 (C. C. A. 2)	22
George S. Schultz, The, 84 Fed. 508 (C. C. A. 2)	22
Greenpoint, The, 31 Fed. 231 (S. D. N. Y.)	16
Haida, The, 191 Fed. 623, affirmed 196 Fed. 1005 (C. C. A. 2)	22, 26

PAGE

Hallgrim, The-Havre Maru, 20 F. (2d) 720 (C. C. A. 2) 30
Haven Belle Seminole, The, 85 F. (2d) 939 (C. C. A. 4) 13
John H. Starin, The, 162 Fed. 146 (C. C. A. 2) 20, 21
John King, The, 49 Fed. 469 (C. C. A. 2) 21, 22
Lexington, The, 275 Fed. 279 (C. C. A. 2) 15
Maggie J. Smith, The, 123 U. S. 349 32
Manx Admiral, The, 60 Lloyds List Law Reports 11 31
Merritt-Chapman & Scott Corporation *v.* Texas Co., 98 F. (2d) 719 (C. C. A. 2) 38
Minnesota S.S. Co. *v.* Lehigh Valley Transportation Co., 129 Fed. 22, 28 (C. C. A. 6) 33
Munrio, The, 11 F. (2d) 900 (N. D. Cal.) 31
Nacoochee, The, 137 U. S. 330 33
Nereus, The, 23 Fed. 448 13
New York, The, 175 U. S. 187 27
Nordpol-Condor, 84 F. (2d) 3 (C. C. A. 2) 15
Norfolk, The, 297 Fed. 251 (D. C. Maryland) 22
Oregon, The, 158 U. S. 186 ..... 13, 14
Pacific, The, 154 Fed. 943 (C. C. A. 3) 33
Pawnee, The, 168 Fed. 371 (S. D. N. Y.) 21
Persian, The, 224 Fed. 441 (C. C. A. 2) 35
Piankatank, The, 87 F. (2d) 806 (C. C. A. 4) 16, 26
Pocomoke, The, 150 Fed. 193 (E. D. Va.) 15
Ponce, The, 116 Fed. 55 (S. D. N. Y.) 31
Reading Co. *v.* Sabine Transportation Co., 91 F. (2d) 112 (C. C. A. 3) 21
San Simeon, The, 63 F. (2d) 798 (C. C. A. 2) 38
Scranton, The, 221 Fed. 609 (C. C. A. 2) 22
Thielbek, The, 241 Fed. 209 (C. C. A. 9) 16
Transfer No. 15, The, 145 Fed. 503 (C. C. A. 2) 20
Umbria, The, 166 U. S. 404 30
Victory, The, and The Plymothian, 168 U. S. 410 ..... 25, 35
West Point, The, 85 F. (2d) 63 (C. C. A. 2) 13, 26, 33
Wilson, *et al. v.* Pacific Mail Steamship Co., 276 U. S. 454 ..... 26, 31

STATUTES CITED

	PAGE
Navigation Rules	
Inland Rules	36
International Rules	39
Supervising Inspectors' Rules	40

TEXTBOOK CITED

Knight's Modern Seamanship, 9th Ed. p. 476	30

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—Nos. 73 AND 74

POSTAL STEAMSHIP CORPORATION, owner of steamship EASTERN GLADE,
Petitioner,

vs.

Steamship EL ISLEO,
SOUTHERN PACIFIC COMPANY,
Respondent.

POSTAL STEAMSHIP CORPORATION,
Petitioner,

vs.

SOUTHERN PACIFIC COMPANY,
Respondent.

BRIEF FOR SOUTHERN PACIFIC COMPANY, RESPONDENT

Statement

This case was brought before this Court by Postal Steamship Corporation, owner of steamship *Eastern Glade*, on certiorari to the Circuit Court of Appeals for the Second Circuit, which affirmed a final decree of the District Court for the Southern District of New York

dismissing petitioner's libel and an interlocutory decree in favor of Southern Pacific Company, owner of steamship *El Isleo*, against petitioner's steamship *Eastern Glade*. Both suits were to recover for damages to the respective vessels resulting from a collision which occurred near the junction of Curtis Bay and Fort McHenry Channels in the approach to Baltimore Harbor in the afternoon of December 19, 1935.

The opinion of the Circuit Court of Appeals is reported at 101 F. (2d) 284, and that of the District Court at 20 F. Supp. 375.

Facts

At about 5 P. M. in the evening of December 19, 1935, respondent's steamship *El Isleo* left the terminal at Sparrow's Point, Baltimore,* bound for Ruckert's Terminal, Baltimore. The weather was clear, tide ebb. The master and an officer were on the bridge; a wheelman was at the wheel, and a seaman was on the bow standing lookout. *El Isleo* proceeded up Brewerton Channel and turned into Fort McHenry Channel, which is a straight channel 4½ miles long and 600 feet wide, except at the anchorage grounds, where it is wider. This channel is intersected by Curtis Bay Channel, which is about two miles long and 450 feet wide, as shown on chart respondent's exhibit 1** (R. 17-19, 195-6, 207).

As *El Isleo* was proceeding up Fort McHenry Channel the green side light of steamship *Eastern Glade* was

* Marked B on chart respondent's exhibit 1.

** A reproduction of the section of Fort McHenry and Curtis Bay Channels is appended to this brief marked Appendix B, showing the relative positions of the channels, the positions of the vessels as they approached and the place of collision outside of and to the east of Fort McHenry Channel.

sighted over a mile away on *El Isleo's* port bow. The *Eastern Glade* was proceeding down Curtis Bay Channel toward Fort McHenry Channel; the position of the *Eastern Glade* at this time is indicated with the letter F on chart marked Exhibit A-McDonald. It is marked A[1] on Appendix B. In this situation *El Isleo* was showing the *Eastern Glade* her red side light and the vessels were red to green and on crossing courses; the *Eastern Glade* was the burdened vessel and bound to keep out of the way of *El Isleo*, whereas *El Isleo* was the privileged vessel and bound to keep her course and speed* (R. 20-2, 25-6; 42-44, 146-8; 197-8).

The *Eastern Glade* sounded a two-blast whistle signal which in the language of the sea was a request for permission from *El Isleo* to surrender her right of way and permit the *Eastern Glade* to continue on out of Curtis Bay Channel and into Fort McHenry Channel and across *El Isleo's* bow. Concededly she had no right under the navigation rules to cross *El Isleo's* bow without *El Isleo's* consent. *El Isleo* promptly answered the *Eastern Glade's* proposal with four blasts, followed immediately by one blast, which signals announced to the *Eastern Glade* that *El Isleo* refused to surrender her right of way, that she (*El Isleo*) would continue on up the channel, and that the *Eastern Glade* (which under the rules was bound to hold back and avoid crossing ahead) should remain in Curtis Bay Channel and not emerge into Fort McHenry Channel until *El Isleo* had passed. These whistle signals from *El Isleo* were acknowledged by the *Eastern Glade*, which replied with four blasts,

* The applicable rules of navigation are set forth in Appendix A attached to this brief.

followed by one blast,* meaning that she would hold back in the channel, as the rules required her to do and as her master admitted he intended to do.** However, instead of remaining in the channel, as her signals announced and as her master testified he intended to do, the *Eastern Glade* continued on out of Curtis Bay Channel and into Fort McHenry Channel just as *El Isleo* was passing the junction of the channels (R. 20-3; 169; 198-201; 282).

As petitioner's navigation, contrary to her signals and contrary to her master's intention, brought about danger of collision, *El Isleo* put her rudder hard right and swung out of Fort McHenry Channel to her own starboard in an attempt to get away from the *Eastern Glade*. However the latter continued on across Fort McHenry Channel and brought her stem into collision with *El Isleo* about amidships on her port (left) side. The place of collision is indicated on Appendix B attached to this brief.

Petitioner's former version of the collision

Originally it was contended by petitioner that upon seeing *El Isleo's* lights proceeding up Fort McHenry Channel, the *Eastern Glade* stopped her engines and after a short interval sounded a signal of two blasts; that *El Isleo* did *not* answer the two-blast signal, but about two minutes later sounded four blasts, followed by one

* Petitioner is mistaken in saying that this was not in *El Isleo's* pleadings (Brief, p. 7). See *El Isleo's* answer Article III, R. 4, lines 7 and 8.

** The *Eastern Glade's* master says that he answered with three blasts (R. 148; 282), which in effect means much the same thing, i.e., three blasts under the rules announces that "My engines are going full speed astern" and could mean only that she would remain in the channel where she belonged. See Article 28, Appendix A.

blast, whereupon the *Eastern Glade* answered with four blasts, stopped her engines and then went full speed astern (R. 14; 43-4; 51-2; 78-9). Her master said he blew three blasts (R. 148; 282).

The master of petitioner's vessel never intended the *Eastern Glade* to emerge from Curtis Bay Channel, but on the contrary intended to remain in the channel to permit *El Isleo* to pass, but due to a "miscalculation" on his part his vessel proceeded faster than he expected, and emerged from Curtis Bay Channel and into collision with *El Isleo* (R. 148-9, 152-3, 168-9).

Petitioner's pleadings alleged, and its witnesses testified, that the collision occurred on the *western* side of Fort McHenry Channel close to Buoy 7-M (marked with letter Y on Appendix B attached to this brief), whereas the collision actually occurred, as petitioner now concedes, directly across and outside the channel to eastward, as the Courts below found (R. 124-5, 151-2, 156-7; 203-4; 267-9; 282-3).

These discrepancies between petitioner's original case and its present contentions go to the very heart of petitioner's case because the facts upon which petitioner relied have been resolved against it by the Court below. Petitioner now contends that the only question is whether *El Isleo* had the right (a) to sound a one-blast signal in answer to petitioner's signal of two blasts; and (b) to maintain her course and speed until it became evident to her master that the *Eastern Glade* alone could not or would not avoid collision (Petition, pp. 2, 4; brief, pp. 2, 7).

We shall show that *El Isleo* did have the right to sound a one-blast signal and to maintain her course and speed.

Opinions below

Both Courts below found that the vessels were on crossing courses and that the petitioner's vessel (*Eastern Glade*) was the burdened one, and that the collision occurred outside and to eastward of the channel, as shown on Appendix B attached to this brief (R. 282-3).

Both Courts found that petitioner's vessel was at fault for not holding back in Curtis Bay Channel until respondent's vessel had passed (R. 268, 283).

Both Courts also agreed that the respondent's vessel acted prudently under the circumstances (R. 268-9, 284).

POINTS

I. The collision was due to the "miscalculation" of the master of petitioner's vessel (*Eastern Glade*) in emerging from Curtis Bay Channel contrary to his intention.

In spite of the assertions in petitioner's brief to the contrary, Inspectors' Rules II and VII, upon which petitioner relies, had nothing to do with this collision which was caused solely by the admitted "miscalculation" of the master of petitioner's vessel following an exchange of whistle signals between the vessels. The signals exchanged were perfectly understood on both vessels and had the *Eastern Glade* navigated in conformity to the exchange of whistle signals, no collision would have occurred.

The *Eastern Glade's* master admitted that he never intended the *Eastern Glade* to emerge from Curtis Bay Channel, to say nothing of going out into Fort McHenry Channel, crossing it and coming into collision with a vessel on the other side of Fort McHenry Channel. He

admitted further that the whole trouble was due to the "miscalculation" on his part because of the "darkness". Indeed, as he said, he "expected" *El Isleo* to pass the intersection of the two channels *before* the *Eastern Glade* got there, but he kept on too long and brought about the collision. His testimony is as follows:

"Q. Well, according to your calculations, *El Isleo* would have gotten up to (buoy) 7 M before you got out in the channel, and there would be no trouble at all? A. That is what I expected.

Q. But it turned out that you got up there just about the same time he did? A. Yes.

Q. So that either he must have slowed or stopped his engines, or else your speed must have been greater that you thought it was? A. No.

Q. Then what do you think upset your calculations? A. Darkness.

Q. It was just a miscalculation? A. Miscalculation.

Q. But you had no intention of doing anything except holding back and letting him go on up the channel and fall in astern of him and you go up? A. Right.

Q. At any time, did you have any intention of doing otherwise? A. No" (R. 168).

The Court below accordingly found that it was never intended by the master of petitioner's vessel to leave Curtis Bay Channel and that the collision was due to her master's "miscalculation". As the Court said:

"The master testified that he never intended to come out of Curtis Bay at the time *El Isleo* was passing and that the whole trouble was due to the miscalculation on his part because of darkness" (R. 267).

The Circuit Court of Appeals came to the same conclusion (R. 282-3).

Furthermore, petitioner's vessel not only emerged from Curtis Bay Channel contrary to her master's intention,

but she went clear across and outside Fort McHenry Channel. As the Court below said:

"'The *Eastern Glade*, although her master testified that he intended to hold back in Curtis Bay Channel until *El Isleo* had passed the junction, came clear across Fort McHenry Channel and brought her stem into contact with the port side of *El Isleo* about amidships. The place of collision was east of Fort McHenry Channel. The District Court did not determine how far to the east, but McDonald testified it was about 200 yards'' (R. 282-3).

It thus appears that petitioner's vessel not only was navigated contrary to her master's intention but that she failed to do what her whistle signals announced she would do even on her master's story, which is that the *Eastern Glade* answered *El Isleo's* four blasts followed by one with three blasts, which means "my engines are going full speed astern" (R. 148; 282). Petitioner even now argues that the *Eastern Glade* promptly reversed her engines at this time (Petition, p. 3; brief, p. 8). On the contrary, the log of petitioner's vessel demonstrates conclusively that she did *not* go astern promptly as petitioner asserts. Her log* shows that her engines were operated as follows:

5:31	Full ahead
5:34	Stop
5:38	Full astern (collision 5:40)

Even on the testimony of petitioner's master who marked on the chart (Exhibit 9) the position of the *Eastern Glade* when he says her engines were stopped at 5:34, she was then about ½ a mile from the place of collision. As the log shows, her engines remained *stopped* for four minutes (5:34 to 5:38) notwithstanding the admitted fact that it was only shortly after 5:34 that the

* *Eastern Glade* exhibit 1 (R. 116).

exchange of whistle signals was made with *El Isleo*.* No explanation has been offered for petitioner's failure to reverse her engines for these four minutes. Obviously putting her engines astern immediately would have had the effect of holding the vessel back in Curtis Bay Channel.

That the *Eastern Glade* was "flying light" and hard to handle, which is admitted, does not excuse her (R. 35-6). Indeed, it was all the more reason why she should have held back in Curtis Bay Channel until *El Isleo* had passed. She was drawing only six to seven feet and her bow was well out of water. She was so high at the stern that her propeller was half out of water. In other words, in her light condition the wind and tide, which was adverse, considerably affected her manoeuvring ability. Both of these forces were combined against the *Eastern Glade*. Her quartermaster admitted that he had a hard time swinging her bow up into the wind (R. 61; 95-6, 100).

What obviously happened was that the *Eastern Glade* was unable to come around in the face of the wind and tide against her port bow and was carried across Fort McHenry channel and when she tardily reversed her engines her bow swung round to starboard and into collision with *El Isleo*, which had swung out of the channel in an attempt to avoid her (R. 125; 151).

It may be that there was something the matter with the *Eastern Glade's* steering gear. Although her witnesses have denied that there was anything wrong, it is singular that within 24 hours after her collision with *El Isleo* the *Eastern Glade* collided with a pier in Baltimore Harbor (R. 70-1; 117-18). In any event, whether the unintentional emergence of the *Eastern Glade* into

* *El Isleo* answered the *Eastern Glade* immediately (R. 21-2; 199).

Fort McHenry Channel, as *El Isleo* was proceeding up the channel, was due to "miscalculation" of the *Eastern Glade's* master, "darkness", some defect in her steering gear or bad handling, the responsibility is the same. It rests solely upon the *Eastern Glade* as the Courts below found (R. 267-8).

In *The Flemington*, 204 Fed. 980 (C. C. A. 2), the Court held the *Flemington* at fault because she "came out under a momentum that she was unable to check".

See also *The Columbia*, 205 Fed. 898 (C. C. A. 2).

II. The rules governing this collision are contained in Articles 19, 21, 22 and 23 of the Inland Rules of Navigation.*

All agree that as *El Isleo* was proceeding up Fort McHenry Channel and *Eastern Glade* was proceeding down Curtis Bay Channel the *Eastern Glade* was showing *El Isleo* her green light only and *El Isleo* was showing *Eastern Glade* her red light only of her side lights (R. 25-6; 43-4; 147-9; 196-8).

Each was on a definite course and their courses were crossing so that *Eastern Glade* had *El Isleo* "on her own starboard side" and petitioner's vessel was bound to keep out of the way (Article 19)*. As her chief officer admitted, the *Eastern Glade* was required to "keep clear" of *El Isleo* (R. 76-7).

In this situation, before any signals were sounded, the *Eastern Glade's* intended course was unknown to those on *El Isleo*. Only her apparent course was known to *El Isleo's* navigators, which was down Curtis Bay

* The Navigation Rules are set forth in Appendix A attached to this brief.

Channel toward the intersection of that channel with Fort McHenry Channel. The *Eastern Glade* might have been intending to turn to the right and go down Fort McHenry Channel, or she might have been intending to cross Fort McHenry Channel and go to an anchorage on the easterly side of the channel, or turn to the left and go up the channel in the same direction as *El Isleo*. The first of these possibilities; viz., turning to the right to go down Fort McHenry Channel was eliminated by the *Eastern Glade's* two-blast signal, which meant to those aboard *El Isleo* that the *Eastern Glade proposed* to cross *El Isleo's* bow (R. 21-2, 32-3; 216-17; 283).

Strangely enough the master of petitioner's vessel was erroneously navigating under the International Rules instead of the Inland Rules, which are applicable to these waters. Although he admitted that his two-blast signal announced to *El Isleo* that the *Eastern Glade* proposed to cross *El Isleo's* bow (as provided under the applicable Inland Rules), he had previously said that at the time he blew the signal he had in mind a different rule, to wit: Article 28 of the inapplicable International Rules (R. 169-70).

The Court below said:

"Evidently from the foregoing (referring to the testimony of petitioner's master) it would appear that the *Eastern Glade's* master was navigating under the International Rules, which apply to ocean and foreign waters, rather than Inland Rules" (R. 267).

Nor is the situation changed because the *Eastern Glade intended* to round buoy 7-M* and proceed up Fort Mc-

* Marked with letter Y on Appendix B.

Henry Channel.* In *The Boston* Socony, 63 F. (2d) 246 (C. C. A. 2), the Court said:

"That she [*Socony*] intended to turn at the buoy is wholly immaterial; it cannot be successfully maintained that she was merely manoeuvring while she was holding a steady heading over the half-mile distance between her pier and the buoy" (p. 247).

It was the relative positions of the two vessels at the time when the signals were first exchanged which governed the situation.

The District Court accordingly held that:

"*El Isleo* had a right to proceed in the manner that she did and it was incumbent upon the *Eastern Glade* to keep out of the way of *El Isleo*. She should have remained in Curtis Bay Channel until *El Isleo* passed. The reason for her emergence into Fort McHenry Channel is immaterial" (R. 268). See also Court's remarks, R. 265-6.

The Circuit Court of Appeals agreed, saying:

"It is not disputed that *El Isleo's* course up Fort McHenry Channel was always apparent to the *Eastern Glade*. But the latter's course was not immediately apparent to *El Isleo;* * * *. When, however, she (*Eastern Glade*) sounded her two-blast signal, she indicated an intention either to cross the bows of *El Isleo* by proceeding across Fort McHenry Channel, or to turn to the left and proceed up the channel. The former alternative would clearly result in crossing courses; the latter would result in convering courses, since the *Eastern Glade's* course, if projected, would carry her into the starboard lane of Fort McHenry Channel, unless she violated her duty by going up on the wrong side. Such converging courses involve the very risk that resulted in the collision, and the rights and duties of the vessels were governed by Articles 19, 22 and 23 of the Inland Rules" (R. 283).

* It is now conceded by petitioner that the *Eastern Glade* never accomplished this but crossed the channel and passed out of it on the east side where the collision occurred.

The authorities amply sustain the conclusion of the Courts below.

The Breakwater, 155 U. S. 252, 263-4; *The Oregon,* 158 U. S. 186, 202; *The Haven Belle Seminole,* 85 F. (2d) 939 (C. C. A. 4); *The West Point,* 85 F. (2d) 63 (C. C. A. 2); *The Albano,* 1907 A. C. 193, 203, 205.

III. The two-blast whistle signal by petitioner's vessel (burdened) gave her no additional right. It was merely a proposal by the burdened vessel to cross the privileged vessel's bow which proposal was rejected by the privileged vessel.

The burdened vessel (petitioner's here) may not shift the burden or obtain relief from her duty to "keep out of the way" under Article 19 by blowing a two-blast whistle signal, as petitioner contends here. To do so would make the privileged vessel the burdened vessel merely by the action of the burdened vessel blowing first, which would vitiate the rules and bring about collisions instead of preventing them.

As Addison Brown, *J.*, said in *The Nereus,* 23 Fed. 448, a leading case:

"A steamer bound to keep out of the way of another steamer by going to the right, under the inspector's regulations, has no right when under no stress of circumstances, but merely for her own convenience, to give the other steamer a signal of two whistles, importing that she will go to the left, unless she can do so safely by her own navigation, without aid from the other, and without requiring the other steamer to change her course or her speed. Otherwise she would be imposing upon the latter steamer more or less of the burden and the duty of keeping out of the way, which by statute is imposed on herself. When two blasts are given under such circumstances, the steamer bound to keep out of the way thereby in effect says to the other: 'I can keep out of your way by going ahead of you to the left, and will do so if you do nothing to thwart me; do you assent?' " (p. 455).

Admittedly *El Isleo* did not assent to the *Eastern Glade's* two-blast proposal. On the contrary, *El Isleo* sounded four blasts followed by one blast, announcing that *El Isleo* refused to yield her right of way, as the Court below found (R. 284). But notwithstanding the privileged vessel's refusal to yield her right of way as she had the right to do, the *Eastern Glade* continued on for six minutes, according to her chief officer (R. 52). Although to make sure that a collision would occur, petitioner's vessel not only emerged from Curtis Bay Channel but completely crossed Fort McHenry Channel and collided with *El Isleo* outside of the channel on the opposite side where *El Isleo* had gone in an attempt to get away from the *Eastern Glade* (R. 268-9; 282-3). Measured on the chart she covered between ½ and ¾ of a mile before the collision occurred, viz. it is ½ mile from position S to collision and ¾ mile from B' to collision (Appendix B).

We fully appreciate that petitioner would have the Court believe that the mere sounding of a two-blast signal by the burdened vessel, which concededly was "unacceptable" to the privileged vessel, made it an exception to the rule and required the privileged vessel to act contrary to the rules. In other words the contention is that she (privileged vessel) should have stopped and reversed her engines, although the rules required her to keep her course and speed (Petition, pp. 2, 4; brief, pp. 2, 7). On the contrary, the Courts have made exceptions to the rules with reluctance and with great caution; indeed, only when imperatively required by special circumstances, which do not obtain here. As this Court has said, under ordinary circumstances a vessel discharges her full duty and obligation to another by a faithful and literal observance of the rules. In *The Oregon*, 158 U. S. 186, the Court said

"As before stated, they [*the collision rules*] are regarded as sufficient protection for a vessel under ordinary circumstances; * * * Exceptions to these rules, though provided for by rule 24 [old number, now 27] should be admitted with great caution and only when imperatively required by special circumstances of the case. It follows that, under all ordinary circumstances, a vessel discharges her full duty and obligation to another by a faithful and literal observance of these rules" (p. 202).

In *The Breakwater*, 155 U. S. 252, the Court said:

"In this connection counsel for the *Breakwater* claims that rule 19, requiring in the case of crossing steamers, that the one having the other upon her starboard side shall keep out of the way of the other, has no application. We think, however, the rule became obligatory from the moment the *Pavonia* got under way, when it became her duty to keep her course and speed, and that of the *Breakwater* to avoid her. *The Britannia*, 153 U. S. 130. It was said by this court in the case of *The Pacific*, (*New York, &c. Steamship Co.* v. *Rumball*), 21 How. 372, 384, and *The Wenona*, 219 Wall. 41, 52, that 'rules of navigation, such as have been mentioned, are obligatory upon vessels approaching each other, from the time the necessity of precaution begins, and continue to be applicable as the vessels advance, so long as the means and opportunity to avoid the danger remain' " (p. 263).

See also *Commonwealth & Dominion Line* v. *U. S.*, 20 F. (2d) 729 (C. C. A. 2); *Nordpol-Condor*, 84 F. (2d) 3 (C. C. A. 2); *The Pocomoke*, 150 Fed. 193 (E. D. Va.); *The Ada-Sappho*, 1 Asp. M. C. 475.

It is well settled that when the burdened vessel decides to "keep out of the way" by keeping on instead of holding back, the burdened vessel *assumes the risk* involved in choosing that method.

In *The Lexington*, 275 Fed. 279 (C. C. A. 2), the burdened vessel was held solely at fault for a collision with

the privileged vessel, notwithstanding the two-blast proposal by the burdened vessel was answered by the privileged vessel. The Court there said:

"Those in charge of the *Keeler* knew that under the rules the *Lexington* was the privileged vessel entitled to keep her course and speed. But they chose to speculate upon what they thought the *Lexington* would do, and so the burdened vessel kept right on, and, when she discovered her mistake, undertook to cross the *Lexington's* bow. In doing so she took the risk of the venture" • • •

"It was the duty of the *Keeler* to keep out of the way of the *Lexington*, and there was nothing in the circumstances which prevented here from doing so. But she did not do so and undertook to cross ahead of her. The collision was the result. The fault was that of the *Keeler*" (p. 284).

In *The Greenpoint*, 31 Fed. 231 (S. D. N. Y.), a collision in New York Harbor between vessels on crossing courses after an exchange of two-blast signals, initiated by the burdened vessel, the Court (Addison Brown, *J.*) said:

"The *Greenpoint's* (privileged vessel) answer by two blasts to the *Grand Republic's* previous signal of two blasts • • • did not of itself change any of the legal obligations of the *Greenpoint*, nor shift the burden of keeping out of the way, under the old rules of navigation relating to harbors; nor did it relieve the *Grand Republic* of her duty to keep out of the way by her own maneuvers alone, nor guaranty the success of her maneuvers. *City of Hartford*, 11 Blatchf. 72; *The Garden City*, 19 Fed. 529, 531; *The Garlick*, 20 Fed. 649; *The Payne*, 20 Fed. 650" (pp. 231-2).

See also: *The Thielbek*, 241 Fed. 209, 215 (C. C. A. 9); *The Piankatank*, 87 F. (2d) 806 (C. C. A. 4); *The Fred B. Dalzell, Jr.*, 45 F. (2d) 580 (C. C. A. 2).

IV. Respondent's vessel (*El Isleo*) was justified in refusing to yield her right of way and sounding a one-blast signal.

After setting forth the facts and the applicable rules, the Court below held that *El Isleo* was justified, as the privileged vessel, in refusing to yield her right of way, saying:

"So viewed, no fault appears in the navigation of *El Isleo*, the privileged vessel. To the two-blast signal of the *Eastern Glade* Captain Korn (of *El Isleo*) responded with an alarm followed by one blast to indicate his refusal to yield his right of way" (R. 284).

The Court then went on to discuss the *Fulton* case, which did not involve a "crossing situation" but a "meeting situation," and discussed the well established rule that in a "crossing situation" the privileged vessel (*El Isleo* here) was not bound to agree to a two-blast signal from the burdened vessel.

Petitioner argues that inasmuch as Rule II of the Supervising Inspectors forbids the sounding of "cross signals", *El Isleo* violated that rule when she sounded a one-blast signal following the *Eastern Glade's* two-blast proposal to cross *El Isleo's* bow (Petition, p. 4; brief, p. 7). This argument rests upon a misconception of Rule II; the words "cross signals" in that rule apply to two vessels in a "meeting situation", neither being privileged. In that situation where one vessel sounds a one-blast signal Rule II forbids an answering signal of two blasts, which is known as a cross signal or *vice versa*. However, in a "crossing situation", which concededly was the situation in the instant case, the *Eastern Glade's* two-blast signal means only (coming from the burdened vessel bound to keep out of the way) "I propose to cross your bow if

you give me your consent." The answer was clear and beyond misunderstanding; it was four blasts followed by one blast, meaning a refusal to yield the right of way. As the Court below said:

"To the two-blast signal of the *Eastern Glade* Captain Korn (master *El Isleo*) responded with an alarm followed by one blast to indicate his refusal to yield his right of way" (R. 284).

And this is in accord with this Court's decision in *The Delaware*, 161 U. S. 459. In that case it was said of an alleged conflict between the Inspectors Rules and the Navigation Rules:

"In this connection, the *Talisman* was charged with a violation of the Supervising Inspectors' rules, in not porting her helm and directing her course to starboard after sounding her first signal. These rules, however, so far as they require the whistle to be used, are applicable rather to vessels meeting end on or nearly end on, and the signals therein provided for are designed to apprise the approaching vessel of the intention of the steamer giving the signal, to port or starboard, as the case may be. As applied to vessels upon crossing courses, however, it means, when a single blast is given by the preferred steamer, nothing more than that she intends to comply with her legal obligation to keep her course, and throw upon the other steamer the duty of avoiding her. Such was evidently the view taken by both parties in this case, as there is not the slightest evidence that the pilot of the *Delaware* was misled by these signals, nor is a failure to port charged in the answer, or suggested in the testimony, as a fault on the part of the *Talisman*. These rules, so far as they require whistles to be used, ought to be construed in harmony with the International Code. If they were so construed as to require the preferred vessel to port, after having blown a blast of her whistle, it would involve a violation of article 23, which requires her to keep her course. On the other hand, if they be construed as applying chiefly to steamers meeting end on, or nearly end on, under Rule 18, they would frequently aid in solving any doubt with regard to the proposed course of the vessel giving the signal, and thus enable the meeting vessel to

govern her own course accordingly. Certainly the rules should not be construed to require the steamer giving the signal to violate a plain statutory rule of navigation" (pp. 466-7).

So here *El Isleo* announced that she was keeping on and for *Eastern Glade* to hold back i.e. she announced that she was complying with her "legal obligation" to "hold her course and speed". The *Eastern Glade* replied with four blasts and one blast (R. 23; 200; 282).* This meant that irrespective of the original proposal by the *Eastern Glade*, an agreement had been reached whereby the *Eastern Glade* would hold back and grant to *El Isleo* the privilege to which she was entitled. Indeed, this is in accordance with what the *Eastern Glade's* master testified he actually intended, to wit: remain in the channel (R. 168).

Petitioner's contention amounts to a claim that Inspectors Rule II modifies the Navigation Rules imposing upon the privileged vessel the affirmative duty of "keeping her course and speed" (Rule 21, U. S. C., Title 33, Section 206). That such was not the intention of the Inspectors Rules is indicated by the wording of Rule VII, dealing with the "crossing situation" wherein it is provided that the privileged vessel "hold her course and speed". The rule reads in part:

"the steam vessel which has the other on her port side shall hold her course and speed; and the steam vessel which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed or stop and reverse."

The Inspectors could not have done otherwise, for no administrative body has authority to repeal or modify any statute enacted by Congress.

---

*Her master says three blasts, which means "My engines are going full speed astern" (R. 148; 282).

In *The Transfer No. 15,* 145 Fed. 503 (C. C. A. 2), the Court said:

"It is suggested that the tug had no business to give a cross-signal, such suggestion being apparently with reference to the Inspectors' rule forbidding the use of such signals. That rule (rule III, as amended January 25, 1899) is by its terms restricted to 'vessels approaching each other from opposite directions,' and does not cover vessels on crossing courses, as these were, where under the steering and sailing rules one is burdened and the other privileged. There is nothing which forbids either of such vessels, while still at a safe distance from the other, to propose a modification of some indicated maneuver. Moreover, as we pointed out in The John King, 49 Fed. 469, C. C. A. 319, when under the steering and sailing rules a vessel has the right to make a particular maneuver, she cannot be deprived of such right by any rule of the Inspectors forbidding her to sound a signal which would indicate her intention to make that particular maneuver. The power of the inspectors to make rules is restricted to such as are 'not inconsistent with the provisions of [the] Act of June 7, 1897, c. 4, 30 Stat. 96 [U. S. Comp. St. 1901, p. 2875],' adopting regulations for preventing collisions upon harbors and inland waters. See section 2 of that act (30 Stat. 102 [U. S. Comp. St. 1901, p. 2884])" (p. 504).

In *The John H. Starin,* 162 Fed. 146 (C. C. A. 2), the construction of Pilot Rule II was before the Court, which held that the rule was framed so as not to conflict with the Navigation Rules, and even if it were, the Navigation Rules, not the Supervising Inspectors' rules, are of superior authority. The Court said:

"We do not agree with her counsel in construing pilot rule II as allowing the burdened vessel to abrogate article 22, by blowing a signal which indicates an intention to cross ahead, when the circumstances of the case admit of her crossing behind. The latter part of the rule would seem to indicate that it was framed so as not to be in conflict with the articles, and, if it were, the articles, and

not the rules, are of superior authority. The John King, 49 Fed. 469, 1 C. C. A. 319" (p. 147).

Reading Co. v. *Sabine Transportation Co.*, 91 F. (2d) 112 (C. C. A. 3); *The John King*, 49 Fed. 469 (C. C. A. 2); *The Pawnee*, 168 Fed. 371 (S. D. N. Y.). Certainly the rule "should not be construed to require the steamer giving the signal to violate a plain statutory rule of navigation." *The Delaware*, 161 U. S. 459.

Moreover, entirely aside from petitioner's contention as to the applicability of Rule II, the *Eastern Glade* was not in any way misled by *El Isleo's* signal. Nor can it be said that the collision in any way resulted therefrom. On the contrary, the collision was due solely to the failure of the *Eastern Glade* to remain in Curtis Bay Channel, as she was required to do by the Navigation Rules.

It has been held again and again that when a vessel has no right to pursue a particular course without receiving the consent of the other vessel, the whistles which she uses in an attempt to obtain that assent are mere invitations to an agreement, contrary to the usual passing. The mere signaling first does not give the burdened vessel any special privilege, or impose on the other vessel any special burden. Clearly it does not reverse the normally applicable rules. The burden cannot be shifted from the burdened to the privileged vessel without her consent.

In *The John H. Starin*, 162 Fed. 146 (C. C. A. 2), the situation was somewhat the same. The Court said:

"The *Jamaica* was the burdened vessel, and was required to keep out of the way of the *Starin*, and to avoid crossing ahead of her if the circumstances of the case admitted. Act June 7, 1897, c. 4, arts. 21, 22, 30 Stat. 101 (U. S. Comp. St. 1901, p. 2883). We are at a loss to see what circumstances there were which did not admit of her executing such maneuver. Instead of doing so, she per-

sisted in crossing ahead, although, as her own pilot testifies, three successive two-blasts whistles which she blew, indicating thereby a wish to navigate otherwise than in accord with article 22 (The George S. Shultz, 84 Fed. 510, 28 C. C. A. 476; The New York, 86 Fed. 814, 30 C. C. A. 628), were each responded to with a single-blast whistle, which was a distinct refusal to enter into any agreement to modify the requirements of the article" (pp. 146-7).

See also: *The Ashley*, 221 Fed. 423 (C. C. A. 2); *The Scranton*, 221 Fed. 609 (C. C. A. 2); *The Haida*, 191 Fed. 623, affirmed 196 Fed. 1005 (C. C. A. 2); *The Cygnus*, 142 Fed. 85 (C. C. A. 2); *The Chicago*, 125 Fed. 712 (C. C. A. 2); *The George S. Schultz*, 84 Fed. 508 (C. C. A. 2); *The John King*, 49 Fed. 469 (C. C. A. 2); *The Norfolk*, 297 Fed. 251 (D. C. Maryland).

In other words, the privileged vessel is entitled to assume that although the burdened vessel may first propose to shift the right of way, it will, if such proposal be rejected, conform to the rules of navigation. *L. Boyers & Sons v. U. S.*, 195 Fed. 490 (C. C. A. 2).

The Fulton, 54 F. (2d) 467 (C. C. A. 2), relied upon by petitioner (Brief, p. 8), did not involve a "crossing situation"; it was a "meeting" or head-on situation where there is no privilege such as there is in a "crossing situation". As the Court there clearly stated:

"In a number of decisions involving crossing situations we have exonerated a vessel which pressed her statutory privilege by crossing the signal and holding her course and speed. * * * Our reasoning has been, that, as the statute (Inland Rules) article 21 (33 U. S. C. A. § 206), puts a duty upon the privileged ship to keep her course and speed, no rule can be valid which affects to relieve her of it, and that she may announce her determination to insist by crossing the first signal. The doctrine has been too long and too repeatedly established to allow any question now, but it is plain that the inspectors have never assented to it" (p. 468).

The Boston Socony, 63 F. (2d) 246 (C. C. A. 2), the same Court said:

"Rule III of the Supervising Inspectors Rules is relied upon as imposing a duty to signal; but in our opinion that rule cannot be construed as applying to vessels on crossing courses. Whether it would be valid if it were so construed, we need not say" (p. 248).

This is not an instance of a blind following of judicial precedent in the face of changed conditions, as petitioner would have the Court believe. Nothing has happened which makes it necessary or even advisable to permit the burdened vessel to vitiate the rules by sounding two blasts for a crossing to which she is not entitled. On the other hand, there is no particular significance in giving the privilege to the vessel having the other on her port bow. The rule probably would work just as well if the privilege was given to the vessel having the other on her starboard bow. However, it is important to have definite, well understood traffic rules at sea as well as ashore. These rules now are well understood notwithstanding petitioner's criticism because of their ancient origin. If they are to accomplish their purpose rather than to make confusion, they must be strictly enforced as the Courts have enforced them in the past. As this Court said with reference to Article 19 in *The Breakwater*, 155 U. S. 252:

"Where rules of this description are adopted for the guidance of seaman who are unlearned in the law and unaccustomed to nice distinctions, exceptions should be admitted with great caution, and only when imperatively required by the special circumstances mentioned in rule 24 (now 27), which may exist in any particular case rendering a departure from them necessary in order to avoid immediate danger. The moment the observance or non-observance of a rule becomes a matter of doubt or discretion, there is manifest danger, for the judgment of one

pilot may lead him to observe the rule, while that of the other may lead him to disregard it" (p. 264).

In *Belden* v. *Chase*, 150 U. S. 674, the Court said:

"Obedience to the rules is not a fault even if a different course would have prevented the collision, and the necessity must be clear and the emergency sudden and alarming before the act of disobedience can be excused. Masters are bound to obey the rules and entitled to rely on the assumption that they will be obeyed, and should not be encouraged to treat the exceptions as subjects of solicitude rather than the rules. The Oregon, 18 How. 570" (p. 699).

V. Respondent's vessel (*El Isleo*) was required under the Navigation Rules (Article 19) to keep her course and speed.

Petitioner, although admitting that the two-blast proposal by the *Eastern Glade* to cross *El Isleo's* bow was "unacceptable" to *El Isleo*, raises the following two questions:

(1) "Should she (*El Isleo*, privileged vessel) maintain her course and speed until it becomes evident to her master that the first vessel alone cannot or will not avoid collision?"

(2) "Or should she (privileged vessel) conform to the objective standards set up by the Supervising Inspectors defining the situation as one of immediate danger, and obey their injunction to stop and back if necessary until an understanding has been reached?" (Petition, p. 2).

We shall answer these two questions under separate headings.

Petitioner's first question

The answer to this question (1) is in the affirmative because it was not only the privilege and the right, but the *duty* of *El Isleo* (privileged vessel) to "keep her course

and speed". She could not stop or stop and reverse her engines because in the first place she would thereby be violating her duty to keep her course and speed, and in the second place she would be speculating upon what the burdened vessel would do. *El Isleo's* navigators were entitled to presume that the *Eastern Glade* would act lawfully and not fail in her duty to stop and reverse and refrain from emerging from the channel, as her master admitted he intended to do and as her whistle signals announced she would do. *The Victory* and *The Plymothian*, 168 U. S. 410, 426.

If *El Isleo* were at liberty to speculate upon the possibility of the *Eastern Glade* failing to do her duty, the certainty that the privileged vessel will hold her course, upon which the burdened vessel has a right to rely, and which it is the very object of the rules to insure, would give place to doubts on the part of the master of the burdened vessel and produce timidity and feebleness of action on the part of both which would bring about more collisions than it would prevent.

In *The Delaware*, 161 U. S. 459, the Court said:

"The cases of *The Britannia*, 153 U. S. 130, and *The Northfield*, 154 U. S. 629, must be regarded, however, as settling the law that the preferred steamer will not be held in fault for maintaining her course and speed, so long as it is possible for the other to avoid her by porting, at least in the absence of some distinct indication that she is about to fail in her duty. If the master of the preferred steamer were at liberty to speculate upon the possibility, or even of the probability, of the approaching steamer failing to do her duty and keep out of her way, the certainty that the former will hold his course, upon which the latter has a right to reply, and which it is the very object of the rule to insure, would give place to doubts on the part of the master of the obligated steamer as to whether he would do so or not, and produce a timidity and feeble-

ness of action on the part of both, which would bring about more collision than it would prevent * * *" (p. 469).

To the same effect see *Wilson* v. *Pacific Mail S. S. Co.*, 276 U. S. 454.

In *The Piankatank*, 87 F. (2d) 806 (C. C. A. 4), the Court said:

"Where two courses are open to a vessel, and particularly to the privileged vessel, one to follow the prescribed rules and the other to depart from them, the duty is imperative to observe the rules, and to assume that an approaching vessel will do likewise, until after the danger has become so manifest as to show that there is no proper choice of judgment other than that of departing from the rules. Any other course would lead to confusion and be a most prolific source of accidents. Indeed the rule is so imperative that it does not give a navigating officer any general latitude as to obeying the rules, and permits a departure only when necessary to avoid immediate, and not remote or problematical, danger, and then only to the extent required to accomplish that object. *Laboyteaux, supra*, p. 172. Furthermore, a departure from the rules would place upon the privileged vessel the burden of proving that in doing so it came within the protection of the article" (p. 810).

In *The Boston*, 277 Fed. 36 (C. C. A. 2), the Court said:

"It is not only the right, but the duty, of a privileged vessel to hold her course and speed until a departure from the rule is necessary to avoid immediate danger. *The Binghamton*, (C. C. A.) 271 Fed. 69; *Yang-Tze Ass'n, etc.*, v. *Furness*, 215 Fed. 859, 132 C. C. A. 201. And, as was said in *The Binghamton, supra*, the fact that subsequent events show that stopping and backing on the part of the privileged vessel would have avoided collision does not prove negligence" (p. 40).

See also *The Haida*, 191 Fed. 623; affirmed, 196 Fed. 1005 (C. C. A. 2); *The West Point*, 85 F. (2d) 63, 65 (C. C. A.

2); *The Elizabeth*, 197 Fed. 160 (C. C. A. 2); *The Florence*, 68 Fed. 940; affirmed, 89 Fed. 1015 (C. C. A. 2).

In *The New York*, 175 U. S. 187 (Petitioner's brief, p. 12), the privileged vessel misled the burdened vessel as to her course. She first ported and then starboarded and brought about a situation of danger.

Petitioner's second question

(2) "Or should she (privileged vessel) conform to the objective standards set up by the Supervising Inspectors, defining the situation as one of immediate danger, and obey their injunction to stop and back if necessary until an understanding has been reached?" (Petition, p. 2).

The answer to this question is in the negative, both because *El Isleo* (privileged vessel) was required to "keep her course and speed" under Article 19 and because the alleged "injunction" of the Supervising Inspectors "to stop and back", as it is put by petitioner, is only "if necessary until an understanding has been reached." It was not necessary here, as an understanding had been reached.

Inspectors' Rule VII, upon which petitioner relies, by its own terms requires *El Isleo* to keep her course and speed and petitioner's vessel to "keep out of the way" and if necessary to do so, slacken speed, stop or reverse. Notwithstanding these restrictions on petitioner's vessel, petitioner claims that when *El Isleo* refused to agree to petitioner's proposal to cross her bow, she should have stopped (Brief, p. 7). In *The Britannia*, 153 U. S. 130 (Petitioner's Brief, p. 10), the privileged vessel, in the position of *El Isleo* here, was held at fault for stopping. In other words, the privileged vessel was held at fault for doing exactly what petitioner would have the privileged vessel do in this case.

Nor can petitioner obtain any comfort from the last paragraph of Rule VII which provides:

"If from any cause the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall be at once made apparent by blowing the danger signal, and both steam vessels shall be stopped and backed if necessary, until signals for passing with safety are made and understood".

There is nothing there which requires the privileged vessel, under the circumstances here, to stop and back as petitioner argues. Petitioner's master "*expected*" *El Isleo* to continue on. As he testified:

"Q. Well, according to your calculations, *El Isleo* would have gotten up to (buoy) 7 M before you got out in the channel, and there would be no trouble at all? A. That is what I expected (R. 168).

And there was nothing in the conditions here to prevent "immediate compliance" with the signals exchanged. The vessels were over a mile apart when they sighted each other (R. 282). Petitioner's proposal to yield the right of way was declined immediately. There was no danger of collision provided petitioner's vessel remained in Curtis Bay Channel as her master intended doing (R. 168). Moreover petitioner's master announced by whistle signal that he understood the situation by answering *El Isleo's* signals in kind, followed by one blast,* which meant for *El Isleo* to continue on up the channel and the *Eastern Glade* to remain in the channel, as her master admittedly

*It is immaterial whether the *Eastern Glade* answered *El Isleo's* signals with four blasts followed by one, as testified to by *El Isleo*, or with three blasts, as testified to by the *Eastern Glade's* master (R. 282). In either instance petitioner's signals announced that the *Eastern Glade* was holding back in the channel, as her master admits he intended to do (R. 168).

intended to do.* There was, therefore, no reason or necessity for *El Isleo* to stop and back. Petitioner's vessel was doing the stopping and backing; respondent's vessel was doing the continuing on as announced by their whistle signals.**.

In brief, whistle signals for passing with safety had been made and were understood on each vessel, and the only reason why this collision occurred is that the master of petitioner's vessel "miscalculated" either his speed or the distance and permitted his vessel to emerge from one channel into and across the other channel and into collision (R. 282).

VI. *El Isleo's* navigators acted with reasonable prudence and skill under the circumstances.

The time came when those aboard *El Isleo* were presented with two alternatives to avoid a collision, viz., she could either stop and reverse or swing to starboard out of

---

* His testimony is quoted at page 7 of this brief.

** Petitioner asserts that *El Isleo* failed to allege in her pleadings that *Eastern Glade* blew four blasts and one (Brief, p. 7). They are mistaken—see *El Isleo's* answer Article 3 (R. 4). Indeed petitioner's own testimony as to whistle signals is so conflicting as to be of no value. Only one of the five witnesses who testified for petitioner agreed with the allegations of her pleadings as to whistle signals. This was her chief officer, and even he contradicted himself. First he testified that the *Eastern Glade* blew two blasts, which were answered by *El Isleo's* four, to which the *Eastern Glade* replied with four (R. 43-4). This is not in accord with the allegations of the *Eastern Glade's* libel, which are that the *Eastern Glade* sounded two blasts, which was answered about two minutes, later by *El Isleo* with a danger signal followed by one blast, to which the *Eastern Glade* replied with a danger signal (R. 2). During his cross examination Johanson added the one blast signal to *El Isleo's* answer (R. 53-54). Her third mate testified that the signals were as follows: *Eastern Glade*, two blasts, *El Isleo*, four blasts, *Eastern Glade*, three blasts (R. 123, 136). The master testified that *Eastern Glade* blew two blasts, *El Isleo* four blasts and one, *Eastern Glade* three blasts (R. 148, 159-60). The lookout testified that the signals were: *Eastern Glade*, two blasts, *Eastern Glade*, four blasts, *El Isleo*, four blasts (R. 79, 84). The quartermaster testified the same as the lookout (R. 91, 102-3).

the channel. *El Isleo* chose the latter alternative. As the pilot testified:

"Q. But you did not continue your course and speed, did you? A. When it became evident there was bound to be a collision we had to do something.

Q. And of course your change of course to starboard after you blew the alarm whistle was because of the danger of collision? A. That is correct, sir.

Q. You were hauling farther away from him? A. Trying to get away from him, that is right, sir. That was also the reason for not stopping the engines.

Q. You thought you could get ahead of him? A. We were practically in that situation. It was the only thing that we could do" (R. 220-1).

To the same effect see the testimony of the master that nothing could be gained by stopping as there was danger of sinking his ship by so doing (R. 25, 36).

The propriety of *El Isleo* swinging hard right to avoid collision is hardly open to question; the *Eastern Glade's* master admitted that this was "just the right thing" to do (R. 173).

Having chosen this alternative, i.e., to swing out of the channel under a right rudder, the greater her speed the farther she could get away from the *Eastern Glade*, which went completely across the channel, and thus avoid collision if possible. The manoeuvre adopted by *El Isleo* was in accordance with the rule prescribed by Admiral Knight for the avoidance of collision, viz.:

"She (privileged vessel) should in most cases turn away with a right rudder and keep her speed, or if possible, increase it" (Knight's Modern Seamanship, 9th Ed. p. 476).

The Courts below accordingly found that *El Isleo* acted prudently under the circumstances (R. 268). The decision is amply sustained by the authorities. *The Umbria*, 166 U. S. 404, 419; *The Hallgrim-Havre Maru*, 20 F. (2d) 720

(C. C. A. 2), 723; *The Manx Admiral*, 60 Lloyds List Law Reports 11.

The contention that *El Isleo* should have changed her course and stopped sooner are the usual ones made by the offending vessel in an attempt to shift the responsibility for collision.

In *Wilson, et al., Pacific Mail Steamship Co.*, 276 U. S. 454, the burdened vessel kept on into collision, and it was attempted to held the privileged vessel *Svea* also at fault. In exonerating the *Svea*, the Court said:

"Consideration must be given to the circumstances as they appeared at the time; not as they are now known. The *Svea* adhered to the fundamental rule. If in the difficult circumstances forced upon him her navigator, whose qualifications are not questioned, exercised his best judgment in not departing therefrom the burdened vessel must accept the consequences. Having driven him into a perplexing situation, the *Newport* cannot complain because he failed to make the most judicious choice between the hazards presented" (pp. 461-2).

In *The Ponce*, 116 Fed. 55 (S. D. N. Y.), approved in *The Munrio*, 11 F. (2d) 900 (N. D. Cal.), the Court said:

"But the offending vessel always accuses. What was done by the unoffending vessel in the high peril which the offending vessel's wrongdoing had brought shows the reverse of beneficial action. If the injured vessel moved, then she should not; if she remained at rest, she should not; if she went forward, she should have gone astern; if she reversed, it was the height of unskilfulness; and so the delinquent seeks to escape, in whole or in part, from the results of his own wrongdoing" (p. 903).

VII. If there were any errors in *El Isleo's* navigation such were errors *in extremis* for which she is not liable.

It is always a difficult question for the navigator of the privileged vessel to decide at what particular moment, if at all, he should reverse engines or change course. In the instant case the master of *El Isleo* decided that the best chance of avoiding collision was in holding her course and speed. When she reached buoy 8-M, she put her rudder hard right and ran out of the channel in an attempt to get away from the *Eastern Glade,* which had emerged from Curtis Bay Channel contrary to her signals. As the Court below said:

"The district court found that *El Isleo* was justified in holding her course and speed until she reached buoy 8 M, when she put her rudder hard right and ran to starboard out of the channel. The evidence amply supports this finding. Nor can her captain be charged with fault because *in extremis* he chose that chance of avoiding the collision instead of the chance of reversing his engines. *The Nordpol,* 2 Cir., 84 F. 2d 3" (R. 284).

It is well settled that when one ship has by wrong manoeuvres placed another in a position of danger, that other ship (*El Isleo* here) will not be held to blame even if she has not been manoeuvred with perfect skill and presence of mind. In *The Maggie J. Smith,* 123 U. S. 349, the Court said:

"The rule is well stated by counsel, that 'if one vessel is brought into immediate jeopardy by the fault of another, the fact that an order other than that which was given might have been more fortunate will not prevent the recovery of full damages'; or, as stated by the court of appeal of England, in the case of *The Bywell Castle,* L. R. 4 Prob. Div. 219, as quoted in the case of *The Elizabeth Jones,* 112 U. S. 516, 5 Supp. Ct. Rep. 468: 'Where one ship has, by wrong maneuvers placed an-

other ship in a position of extreme danger, that other ship will not be held to blame if she has done something wrong, and has not been maneuvered with perfect skill and presence of mind' " (pp. 355-6).

In *The West Point*, 85 F. (2d) 63 (C. C. A. 2), the Court said:

"That act was dictated by the best judgment of the master at the time and in an emergency. If he made a miscalculation due to conditions arising from the failure of the *Marion* to heed his warnings and to keep out of his way, he cannot fairly be held responsible for the eventuality. His error, if any, was *in extremis*" (p. 65).

See also *The Blue Jacket*, 144 U. S. 371; *The Nacoochee*, 137 U. S. 330; *Atlas Transp. Co.* v. *Lee Line Steamers*, 235 Fed. 492, 496 (C. C. A. 8); *Minnesota S.S. Co.* v. *Lehigh Valley Transportation Co.*, 129 Fed. 22, 28 (C. C. A. 6); *The Columbia*, 109 Fed. 660 (C. C. A. 9); *The City of Augusta*, 80 Fed. 297 (C. C. A. 1); *The Pacific*, 154 Fed. 943 (C. C. A. 3); *The Chatham*, 52 Fed. 396 (C. C. A. 4).

VIII. The faults of the *Eastern Glade* are so patent and so fully account for the collision that any doubt as to *El Isleo's* navigation should be resolved in her favor.

The collision is fully accounted for by the gross negligence of petitioner's vessel in continuing on into and across Fort McHenry Channel in the face of unfavorable wind and tide conditions with full knowledge that *El Isleo* was proceeding up Fort McHenry Channel. As the Court below said:

"The fault of the *Eastern Glade* was glaring and was alone sufficient to account for the disaster; hence any slight doubt as to the propriety of *El Isleo's* navigation should be resolved in her favor. *The City of New York*, 147 U. S. 72, 85" (R. 284).

In *The City of New York*, 147 U. S. 72, this Court said:

"In view of the recklessness with which the steamer was navigated that evening, it is no more than just that the evidence of contributory negligence on the part of the sailing vessel should be clear and convincing. Where fault on the part of one vessel is established by uncontradicted testimony, and such fault is, of itself, sufficient to account for the disaster, it is not enough for such vessel to raise a doubt with regard to the management of the other vessel. There is some presumption at least adverse to its claim, and any reasonable doubt with regard to the propriety of the conduct of such other vessel should be resolved in its favor" (p. 85).

The Cranford, 27 F. (2d) 710 (C. C. A. 2), the Court said:

"The *Cranford* was clearly at fault in violating the starboard hand rule, requiring her to keep out of the way of the privileged vessel. She should not have attempted to cross ahead of her. *The Delaware*, 161 U. S. 459; *The Britanica*, 153 U. S. 130; *The Binghamton* (C. C. A.), 271 F. 69; *The Musconetcong* (C. C. A.), 255 F. 675. Her

fault was so great, in persistently violating this rule, that any doubt of fault on the part of the *Cumberland* should be construed in her favor. *City of New York*, 147 U. S. 72; *The Binghamton* (C. C. A.) 271 F. 69; the *Persian* (C. C. A.) 224 F. 441" (p. 712).

See also: *The Victory* and *The Plymothian*, 168 U. S. 410; *The Ashbourne*, 181 Fed. 815 (C. C. A. 2); *The Fort St. George*, 27 F. (2d) 788 (C. C. A. 2); *The Persian*, 224 Fed. 441 (C. C. A. 2).

IX. The decrees below should be affirmed.

CHAUNCEY I. CLARK,
BURTON H. WHITE,
Counsel for Southern Pacific Company, Respondent.

Dated, New York,
November 11, 1939.

APPENDIX A

Inland Rules of Navigation

Article 18, Rule I. Meeting situation.

When steam vessels are approaching each other head and head—that is, end on, or nearly so—it shall be the duty of each to pass on the port side of the other; and either vessel shall give, as a signal of her intention, one short and distinct blast of her whistle, which the other vessel shall answer promptly by a similar blast of her whistle, and thereupon such vessels shall pass on the port side of each other. But if the courses of such vessels are so far on the starboard of each other as not to be considered as meeting head and head, either vessel shall immediately give two short and distinct blasts of her whistle, which the other vessel shall answer promptly by two similar blasts of her whistle, and they shall pass on the starboard side of each other.

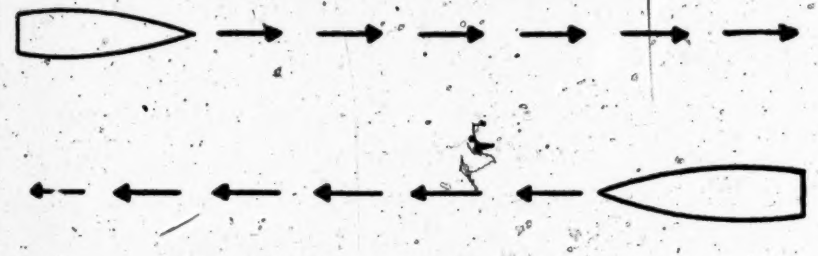
The foregoing only applies to cases where vessels are meeting end an or nearly end on, in such a manner as to involve risk of collision; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own, and by night to cases in which each vessel is in such a position as to see both the side lights of the other.

It does not apply by day to cases in which a vessel sees another ahead crossing her own course, or by night to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other, or where a red light without a green light or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead" (Navigation Laws of the United States, 1935, p. 253).

Meeting situation—head and head.

Meeting situation—port to port.

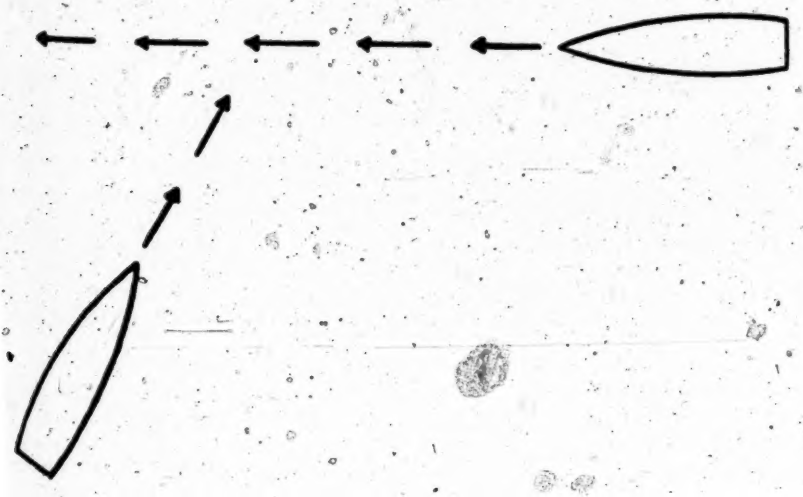
Meeting situation—starboard to starboard.



Article 19. Crossing situation. Burdened vessel to keep out of the way when two steam vessels are crossing.

When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other. (June 7, 1897, sec. 1—33 U. S. C. 204) (Navigation Laws of the United States, 1935, p. 255)

Crossing situation.



Article 21. Crossing situation. Privileged vessel to keep her course and speed.

Where, by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed. (June 7, 1897, sec. 1—33 U. S. C. 206.) [See arts. 27 and 29.] (Navigation Laws of the United States, 1935, p. 255)

Article 22. Burdened vessel avoid crossing ahead.

Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other. (June 7, 1897, sec. 1—33 U. S. C. 207.) (Navigation Laws of the United States, 1935, p. 255)

Article 23. Burdened vessel to slacken speed, stop or reverse.

Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed, or stop or reverse. (June 7, 1897, sec. 1—33 U. S. C. 208.) (Navigation Laws of the United States, 1935, p. 255)

Article 18, Rule III. Danger or alarm signal.

If, when steam vessels are approaching each other, either fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts, not less than four, of the steam whistle." (Navigation Laws of the United States, 1935, p. 253)

Note: This rule has been interpreted by the Courts to cover a disagreement with the proposal of another vessel. *Merritt-Chapman & Scott Corporation* v. *Texas Co.*, 98 F. (2d) 719 (C. C. A. 2); *The San Simeon*, 63 F. (2d) 798 (C. C. A. 2).

Article 28. Three blasts indicates engines going full speed astern.

When vessels are in sight of one another a steam vessel under way whose engines are going at full speed astern shall indicate that fact by three short blasts on the whistle. (June 7, 1897, sec. 1—33 U. S. C. 213.) (Navigation Laws of the United States, 1935, p. 256)

Article 27. General prudential rule.

In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger. (June 7, 1897, sec. 1—33 U. S. C. 212.) (Navigation Laws of the United States, 1935, p. 256)

Article 29. Special circumstance rule.

Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case. (June 7, 1897, sec. 1—33 U. S. C. 221.) (Navigation Laws of the United States, 1935, p. 256)

Article 32. Helm orders.

Right rudder to mean "Direct the vessel's head to starboard."

Left rudder to mean "Direct the vessel's head to port." (June 7, 1897, sec. 1; Aug. 21, 1935, sec. 2—33 U. S. C. 232.) [The provisions of Art. 32 become effective on Jan. 1, 1937—Act Aug. 21, 1935, sec. 5.] (Navigation Laws of the United States, 1935, p. 257)

International Rules

Article 28. Meaning of one-blast, two-blast and three-blast signals.

One short blast to mean, "I am directing my course to starboard."

Two short blasts to mean, "I am directing my course to port."

Three short blasts to mean, "My engines are going at full speed astern." (Aug. 19, 1890, sec. 1—33 U. S. C. 113.) (Navigation Laws of the United States, 1935, p. 245)

Supervising Inspectors' Rules.

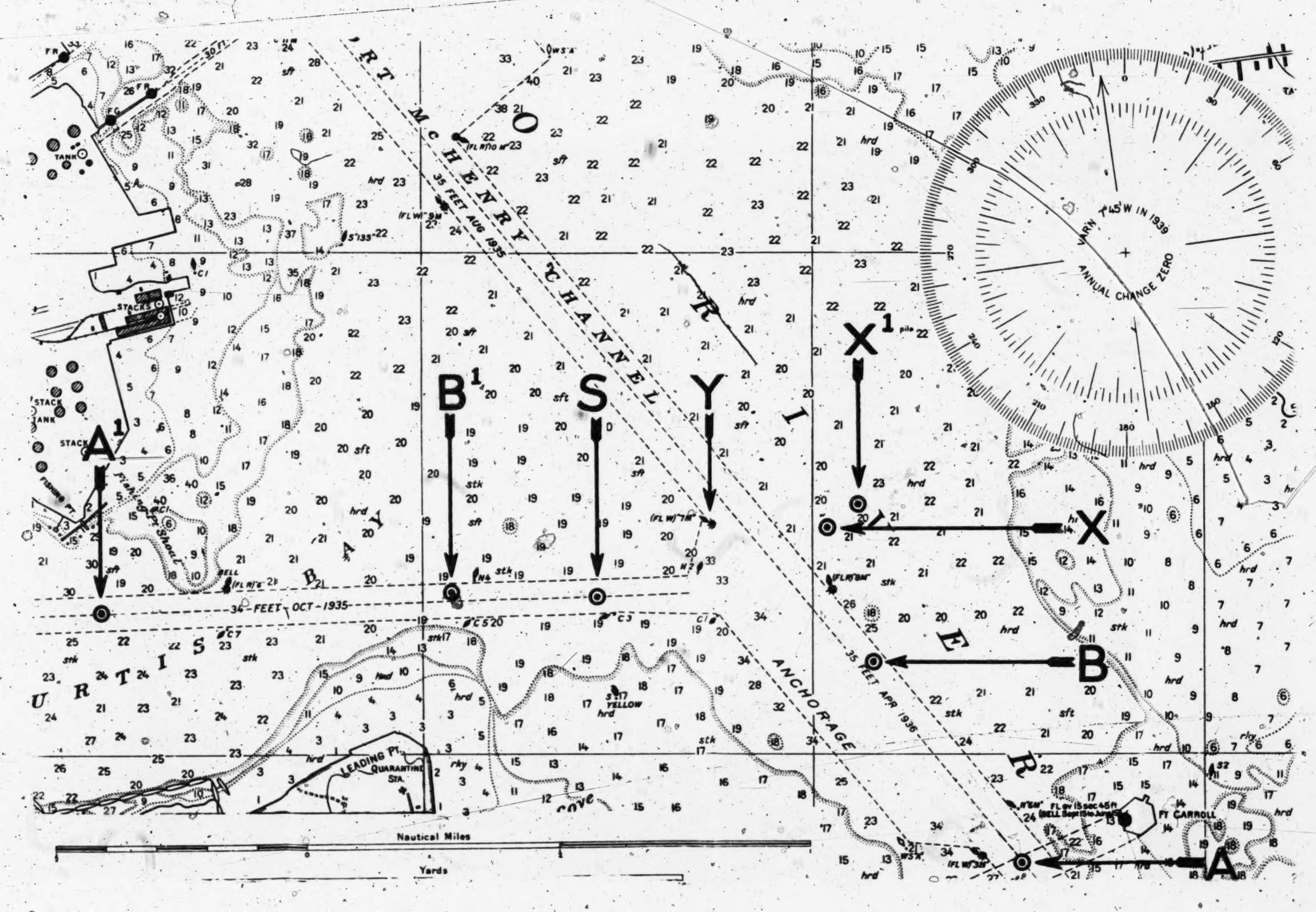
Rule II. Steam vessels are forbidden to use what has become technically known among pilots as "CROSS SIGNALS", that is, answering one whistle with two, and answering two whistles with one.

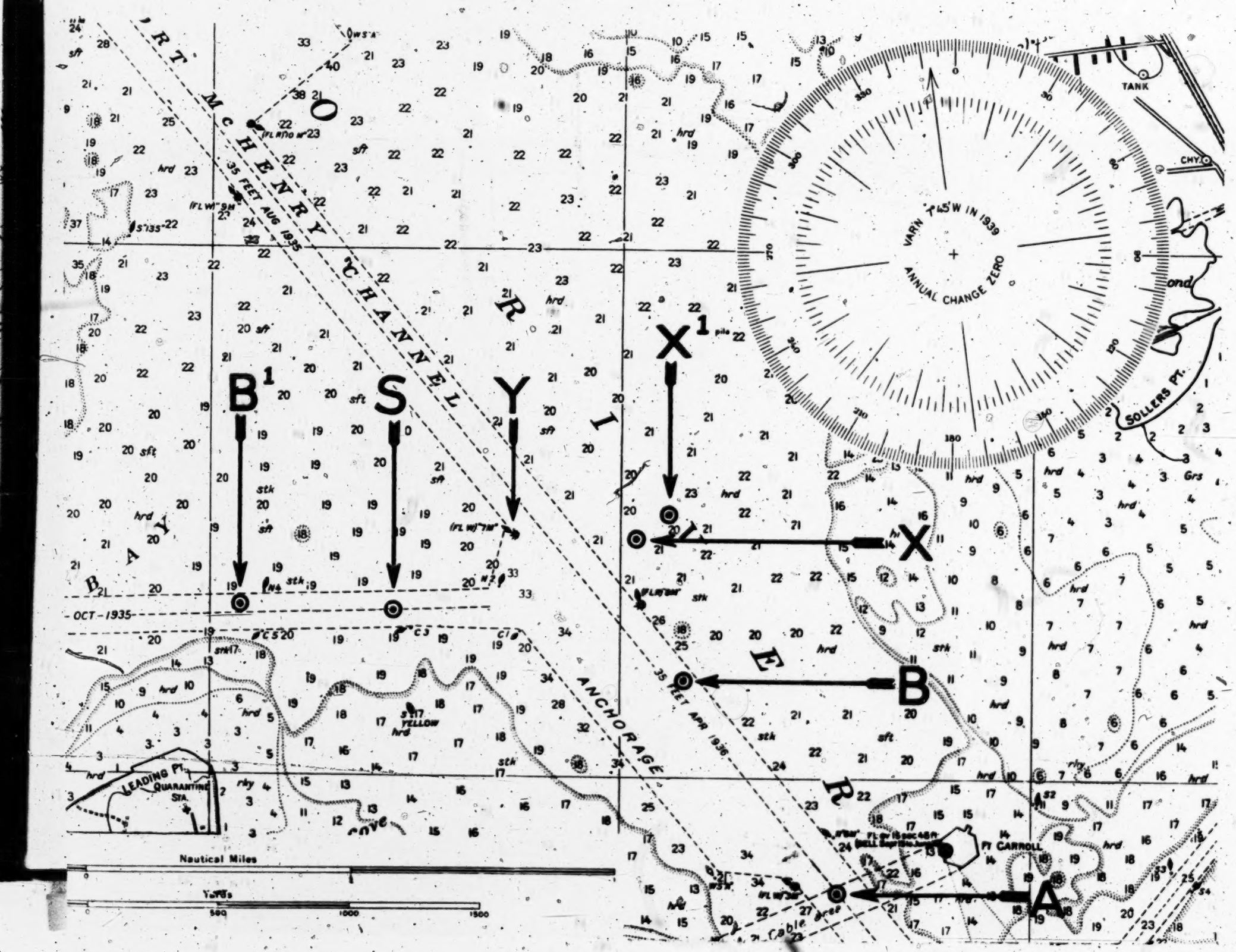
Rule III. The *signals for passing,* by the blowing of the whistle, shall be given and answered by pilots, in compliance with these rules, not only when meeting "head and head", or nearly so, but at all times when the steam vessels are in sight of each other, when passing or meeting at a distance within half a mile of each other, and whether passing to the starboard or port.

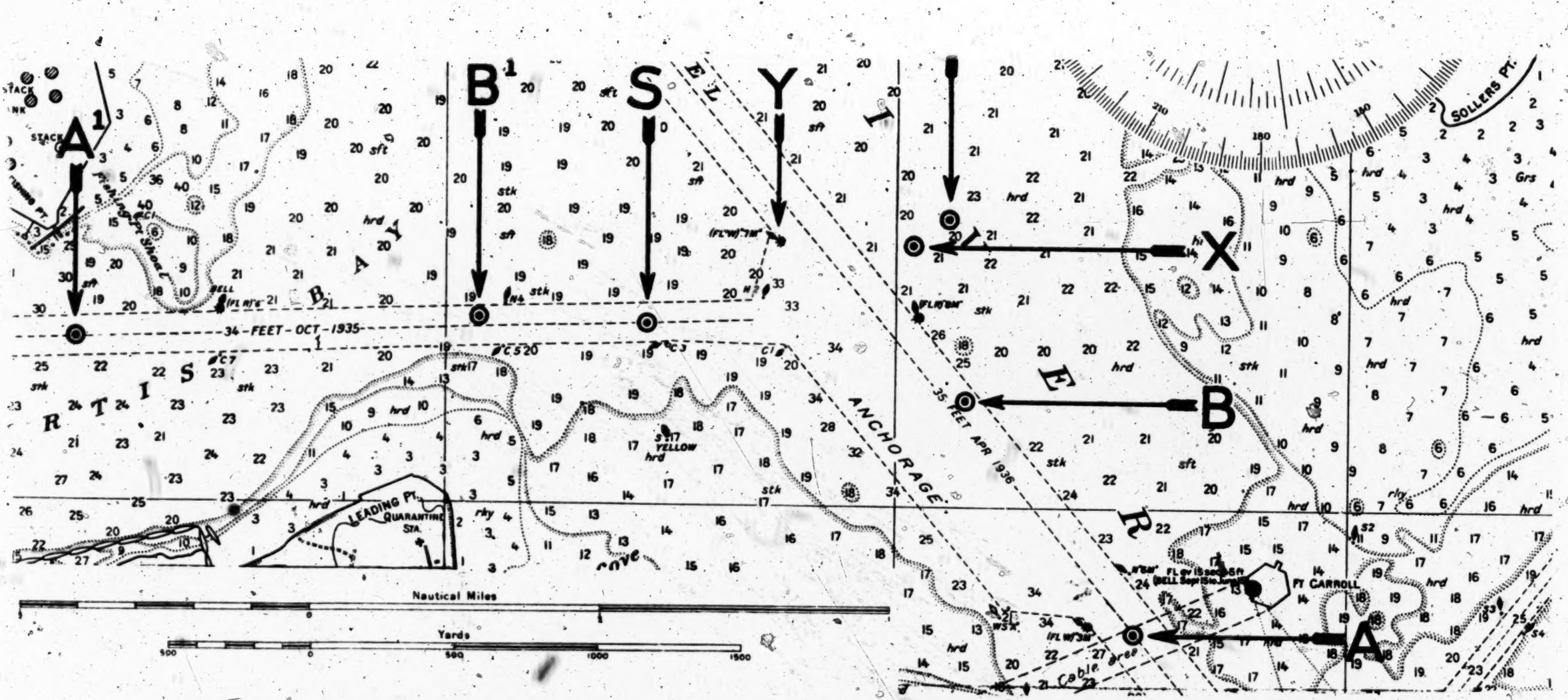
The whistle signals provided in the rules for steam vessels meeting, passing, or overtaken are never to be used except when steam vessels are in sight of each other, and the course and position of each can be determined in the daytime by a sight of the vessel itself, or by night by seeing its signal lights. In fog, mists, falling snow, or heavy rainstorms, when vessels can not so see each other, fog signals only must be given.

Rule VII. When two steam vessels are approaching each other at right angles or obliquely so as to involve risk of collision, other than when one steam vessel is overtaking another, the steam vessel which has the other on her own port side shall hold her course and speed; and the steam vessel which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed or stop or reverse.

If from any cause the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall be at once made apparent by blowing the danger signal, and both steam vessels shall be stopped and backed if necessary until signals for passing with safety are made and understood.


FORT MCHENRY CHANNEL
35 FEET AUG 1935
ANCHORAGE
35 FEET APR 1936
34 FEET OCT 1935
VARN 7°45' W IN 1939
ANNUAL CHANGE ZERO
A1
B1
SY
X1
X
B
A
LEADING PT.
QUARANTINE STA.
FT CARROLL
Nautical Miles
Yards


FT. McHENRY CHANNEL
35 FEET AUG 1935
35 FEET APR 1936
ANCHORAGE
B 1
S
Y
X 1
X
B
A
R
R
E
E
OCT - 1935
VARN 7°45'W IN 1939
ANNUAL CHANGE ZERO
TANK
CHY.
SOLLERS PT.
LEADING PT.
QUARANTINE STA.
FT CARROLL
Nautical Miles
Yards
500
1000
1500



LEGEND

A—Position of *El Isleo* when *Eastern Glade* was first observed (R. 197, 209-10, marked E on Exhibit A).

A¹—Position of *Eastern Glade* when first seen by *El Isleo* (R. 210, marked F on Exhibit A).

B—Position of *El Isleo* when she blew four blasts followed by one in answer to *Eastern Glade's* two blasts (R. 200-1, marked A on Exhibit A).

B¹—Position of *Eastern Glade* when she blew two blasts (R. 201, marked B on Exhibit A).

S—Position of the *Eastern Glade* (according to her master's testimony) when she stopped her engines (R. 149, marked "stop" on Exhibit 9).

X—200 yards east of Fort McHenry Channel referred to by Court below as about place of collision (R. 282-3).

X¹—Place of collision marked by *El Isleo's* pilot with letter C on Exhibit A (R. 203).

Y—Buoy 7 M.

SUPREME COURT OF THE UNITED STATES.

Nos. 73, 74.—October Term, 1939.

Postal Steamship Corporation, Petitioner, vs. Steamship El Isleo, etc., Southern Pacific Company, Claimant.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.
Postal Steamship Corporation, Petitioner, vs. Southern Pacific Company.	

[January 2, 1940.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The steamer Eastern Glade, owned by petitioner, collided with the steamer El Isleo, owned by respondent, in the waters of Baltimore harbor. Each owner filed a libel against the vessel of the other. The District Court found that the Eastern Glade was solely at fault (20 F. Supp. 373) and decrees dismissing petitioner's suit and awarding damages to respondent were affirmed by the Circuit Court of Appeals. 101 F. (2d) 4. In the view that there was involved an important question of maritime law which had not been, and should be, settled by this Court, certiorari was granted. October 9, 1939.

That question is said to arise from rulings of the Circuit Court of Appeals with respect to the validity of Rules II and VII of the Board of Supervising Inspectors[1] in the light of the applicable provisions of the Act of Congress.[2] See *The Fulton*, 54 F. (2d) 467, 468.

[1] "Pilot Rules for Certain Inland Waters", etc., effective, as amended, May 1, 1912.

[2] Inland Rules, Act of June 7, 1897, Arts. 19, 21-23, 27, 30 Stat. 101, 102; U. S. C. 204, 206-208, 212.

The facts are thus stated by the Circuit Court of Appeals:

"The collision occurred in the waters of Baltimore Harbor near the junction of Curtis Bay Channel with Fort McHenry Channel. The latter is about 600 feet wide and runs in a northwesterly direction towards Baltimore; the former running nearly east and west, comes into Fort McHenry Channel from the west but does not cross it. The night was clear, the tide ebb, and a 15 mile breeze was blowing from the northwest. The steamship Eastern Glade, light, was bound out of Curtis Bay Channel and was intending to turn left into Fort McHenry Channel and proceed to Baltimore. The steamer El Isleo, laden with 1,000 tons of steel ore, also bound for Baltimore, was proceeding up Fort McHenry Channel at full speed—about eight miles through the water as she was working only one boiler. When the vessels sighted each other they were more than a mile apart, the El Isleo being about four points on the starboard bow of the Eastern Glade. The latter stopped her engines and shortly thereafter sounded a two blast signal to indicate, as her master says, that his course was to the left and up Fort McHenry Channel. El Isleo answered the two blast signal with an alarm followed by one blast to indicate that she would keep her course and speed. Captain Korn of El Isleo testified that the Eastern Glade responded with four blasts followed by one, while her captain says she responded with three blasts to indicate that she was reversing her engines. El Isleo kept on until she reached a buoy just opposite Curtis Bay Channel, when, believing collision imminent, she put her rudder hard right and swung out of Fort McHenry Channel to her starboard. The Eastern Glade, although her master testified that he intended to hold back in Curtis Bay Channel until El Isleo had passed the junction, came clear across Fort McHenry Channel and brought her stem into contact with the port side of El Isleo about amidships. The place of collision was east of Fort McHenry Channel. The district court did not determine how far to the east, but McDonald testified it was about 200 yards".

After referring to the question whether the vessels were on crossing courses as the district court had held, or whether the situation was one of special circumstances, as petitioner contended, the Court of Appeals continued:

"It is not disputed that El Isleo's course up Fort McHenry Channel was always apparent to the Eastern Glade. But the latter's course was not immediately apparent to El Isleo; when the Eastern Glade should reach the end of Curtis Bay Channel, she might turn left, she might turn right, or she might conceivably, though improbably, cross Fort McHenry Channel, since there was water enough to the East of that channel, although neither pier, port nor anchorage to which she might be bound appears on the chart. When

however, she sounded her two blast signal, she indicated an intention either to cross the bows of El Isleo by proceeding across Fort McHenry Channel, or to turn to the left and proceed up that channel. The former alternative would clearly result in crossing courses, the latter would result in converging courses, since the Eastern Glade's course, if projected, would carry her into the starboard lane of Fort McHenry Channel, unless she violated her duty by going up on the wrong side. Such converging courses involve the very risk that resulted in the collision and the rights and duties of the vessels are governed by Articles 19, 22 and 23 of the Inland Rules, 33 U. S. C. A., §§ 204, 207, 208. . . . Accordingly, the district court was right in treating the situation as one of crossing courses".

The Articles of the Inland Rules established by Congress[3] provide:

"Art. 19. When two steam-vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other.

"Art. 21. Where, by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed.

"Art. 22. Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case, admit, avoid crossing ahead of the other.

"Art. 23. Every steam-vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.

Applying these statutory provisions, and viewing the situation as one of "crossing courses", the Court of Appeals found that no fault appeared in the navigation of El Isleo, the "privileged vessel". The fault of the Eastern Glade was found to be glaring and alone sufficient to account for the disaster.

Petitioner does not contest the ruling that the Eastern Glade was at fault but insists that the El Isleo was also at fault. Petitioner argues that El Isleo violated Rules II and VII of the Supervising Inspectors, purporting to have been adopted under the authority of the statute.[3] These rules are as follows:[4]

"Rule II. Steam vessels are forbidden to use what has become technically known among pilots as 'cross signals', that is, answering one whistle with two, and answering two whistles with one.

"Rule VII. When two steam vessels are approaching each other at right angles or obliquely so as to involve risk of collision, other

[3] Act of June 7, 1897, c. 4, sec. 2, 30 Stat. 102; 33 U. S. C. 157.

[4] See Note 1.

than when one steam vessel is overtaking another, the steam vessel which has the other on her own port side shall hold her course and speed; and the steam vessel which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed or stop or reverse.

"If from any cause the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall be at once made apparent by blowing the danger signal, and both steam vessels shall be stopped and backed if necessary, until signals for passing with safety are made and understood".

Petitioner says that these rules are not inconsistent with the statute and have the force of law; that they provide in substance "that where the so-called privileged vessel in a crossing situation receives an unacceptable proposal to cross ahead, the privileged vessel may not maintain her course and speed until collision becomes imminent but must at once sound danger signals and stop and back if necessary until a safe passage has been agreed upon." Hence, it is argued, that El Isleo was required to "stop, and reverse if necessary," when the Eastern Glade sounded her two-blast signal, and that the only question here is as to the validity of the Inspectors' requirements.

Respondent contends that the statutory provisions of Articles 19-23 govern; that it was not only the privilege but the duty of El Isleo to "keep her course and speed"; that it was not the intention of the Supervising Inspectors to modify that affirmative duty; that El Isleo was not bound to agree to the two-blast signal from the Eastern Glade; that the signals had been made and were understood by each vessel and the collision was due to the miscalculation of the master of the Eastern Glade; and that if there were any errors in El Isleo's navigation they were errors *in extremis* for which she is not liable.

The Inspectors' prohibition against "cross signals", found in Rule II, was originally applicable to "vessels approaching each other from opposite directions"[5] but was amended so that its terms apply to crossing situations as well.[6] *The Fulton, supra.*

[5] See Rule III, "Pilot Rules for Atlantic and Pacific Coast Inland Waters", edition October 23, 1906.

[6] See Rule II, edition July 1, 1907; edition May 1, 1912.

But the Court of Appeals in a number of decisions involving crossing situations has disregarded the Inspectors' rule and has "exonerated a vessel which pressed her statutory privilege by crossing the signal and holding her course and speed".[1] *Id.* It is unnecessary to review the many cases which the present parties cite, as the court itself has summarized its position:

"Our reasoning has been that, as the statute (Inland Rules) article 21 (33 U. S. C. A., § 206), puts a duty upon the privileged ship to keep her course and speed, no rule can be valid which affects to relieve her of it, and that she may announce her determination to insist by crossing the first signal. The doctrine has been too long and too repeatedly established to allow any question now, but it is plain that the inspectors have never assented to it". *Id.*

Although the Court of Appeals, after making this statement in *The Fulton*, said that, as the court was then constituted, it could not see any necessary inconsistency between the Inspectors' rule and the statute, the court concluded that "unless the Supreme Court chooses finally to settle the whole matter otherwise", it had no option "in crossing situations" and would "continue to disregard the rule". *The Fulton*, however, presented a "head-on situation", and the Court of Appeals, feeling that it was not committed in such a case, decided that the steamship there in question was "at fault for crossing the signal". *Id.*, p. 469.

In the instant case, the Court of Appeals again referred to the rule as established in the second circuit, "that in a crossing situation the privileged vessel may 'cross' the signal of the burdened vessel and hold her course and speed until it becomes evident that the burdened vessel either cannot or will not keep out of the way". And the court observed that although this rule was criticised in *The Fulton*, it was thought to be "too firmly established to be departed from until the Supreme Court speaks". The court added that it still adhered to that view. 101 F. (2d), p. 6.

We may assume that the Supervising Inspectors had no intention to depart from the statute under which they claimed authority to make their regulations. And Articles 19-23 of the statute are to

[1] In the Fulton, 54 F. (2d) p. 468, the Circuit Court of Appeals cited to this effect The John King, 49 Fed. 469; The Cygnus, 142 Fed. 85; The Transfer No. 15, 145 Fed. 503; The John H. Starin, 162 Fed. 146; The Montauk, 190 Fed. 697; The Ashley, 221 Fed. 423.

be read in the light of Article 27 which has the following controlling qualification:

"Art. 27. In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger".

Moreover, the Inspectors expressly recognize and follow the statute in providing in Rule VII, first paragraph, that "the steam vessel which has the other on her own port side shall hold her course and speed; and "the steam vessel which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed or stop or reverse". The second paragraph of Rule VII, providing for the stoppage and backing of both vessels if necessary "until signals for passing with safety are made and understood", was clearly intended to apply to the dangerous situation envisaged in Article 27 of the statute.

The grounds for criticising the rulings of the Court of Appeals of the second circuit in disregarding the Inspectors' requirement cannot be better stated than in the court's own language in *The Fulton*. After referring to its former decisions, by which it felt itself bound, the court observed that "concededly there comes a time when the privileged vessel must yield"; that there is never a "right of way into collision"; that the point at best "is one of degree"; and that if the question were *res integra* the Inspectors' rule would be held valid. The court continued: "The inspectors apparently believe that in the greater number of cases it will conduce to collision to allow a pilot to keep on in the face of a proposal by the approaching vessel that she put herself across his bows. True, the proposer often will not act without consent; but it is certainly possible that prudence forbids speculation as to whether he has still time or disposition to keep out of the way. Again and again cases arise in which the proposal is repeated, the vessels coming nearer all the time; sometimes it is repeated even after it has been crossed by a refusal. No substantial interest is at stake except to escape collision which will certainly be avoided if both stop". Stopping "is more likely to avoid disaster than going on in the teeth of what is at least a proposal, and may be a declaration". So, the court thought that the situation was a proper one "fo. the exercise of the inspectors' function in providing for cases

not covered explicitly". The court could not see "any conflict with the statute, unless that be read without regard to its purpose". For Articles 19 and 21 "do not require any signals at all"; and "if one is given proposing a dangerous course", the court thought it "too verbal and rigid an interpretation to say that the privileged vessel is inevitably still bound; at least officials, vested with general authority, are not helpless to meet the situation by a rule". And after noting that Article 27 of the statute authorized a departure "to avoid immediate danger", the court posed the question —"Can it be that though vessels themselves may so depart, the inspectors may not say that a situation likely to be dangerous shall be treated as such?"

We are in accord with the criticism thus effectively expressed by the Court of Appeals of its established rule, and we think that the court should be relieved of its assumed obligation to follow its former decisions holding the Inspectors' requirement invalid. We think that Inspectors' Rule II should be read in connection with their Rule VII and that both should be construed in the light of the statutory provision in Article 27..

The plain purpose of the Inspectors' Rules is to minimize the danger of collision. The so-called privileged vessel has no absolute right to keep her course and speed regardless of the danger involved in that action. Her right to maintain her privilege ends when there is danger of collision and in the presence of that danger both vessels must be "stopped and backed if necessary, until signals for passing with safety are made and understood".

In *The Quogue*, 47 F. (2d) 873, where the Court of Appeals of the second circuit had before it a "head-on situation", the court condemned a vessel "for crossing signals and insisting upon her rights". That vessel was The Transfer and the right insisted upon was that of port to port passage. The fault of the other vessel, The Quogue, in undertaking to cross the bow of The Transfer was found to be "most glaring", but The Transfer was also held at fault because her master was not justified in acting on the assumption that The Quogue would not carry out the maneuver indicated by her signals unless he consented. He did not "reverse as promptly as he should", for when the dangerous situation was presented "he was not privileged to continue on his course on the chance that the other vessel would change her announced purpose if he refused to

consent". The Court of Appeals aptly said: "It is a hard rule which requires a master when he sees another vessel about to cross his bow with wanton disregard of his rights to stop and allow the arrogant usurper to pursue his wrongful course. But safety is better than pride; and however slight the hope that rules to promote safety will be observed under such circumstances, whatever courts may say, the vessels must be judged according to their legal duties".

The Court of Appeals in *The Fulton* considered these observations in *The Quogue* to be pertinent, and we think that they are pertinent to a dangerous situation arising in connection with crossing courses. We see no sufficient ground for a distinction in upholding and applying the Inspectors' requirements in such cases.

We deal simply with the question presented with respect to the validity of the Inspectors' rules here in question. We hold these rules are not essentially inconsistent with the statute and are valid, both the statutory provisions and the Inspectors' Rules being designed to promote safety in situations fraught with danger. We do not pass, or intimate any opinion, upon the particular facts of the instant case, as it is the appropriate province of the Court of Appeals to deal with these. As the Court of Appeals apparently did not consider the conduct of El Isleo in the light of the Inspectors' requirements, but thought, under the compulsion of its former decision, that it must disregard those requirements, we think that the cause should be returned to the Court of Appeals to be decided by it, free of that compulsion.

To afford that freedom we reverse the judgments and remand.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.